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ABSTRACT

The August 1, 1984 hearing focuses on the monitoring activities of the Office of Special Education. Statements are presented from the Assistant Secretary for Civil Rights, Department of Education; representatives of the Consortium for Citizens with Developmental Disabilities (CCDD); and the Assistant Secretary for Special Education and Rehabilitation Services, Department of Education. The report of CCDD criticizes the decreasing scope of federal monitoring, obstacles to parent and professional input, problems wih on-site reviews, and lack of consistency in followup. An attorney also cites problems within the monitoring procedures, including confusion of state plan review and compliance monitoring activities, and investigative and followup procedures. The Assistant Secretary for Civil Rights, U.S. Department of Education reviews recent activities within the Office for Civil Rights to ensure compliance with P.L. 94-142 and Section 504 of the Rehabilitation Act of 1973. The statement of the Assistant Secretary for Special Education and Rehabilitative Services, Department of Education touches upon program management reviews, financial management reviews, program data analysis, and audits. (CL)

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OVERSIGHT HEARING ON MONITORING ACTIVITIES OF THE OFFICE OF SPECIAL EDUCATION AND REHABILITATION SERVICES

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HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION

OF THE

COMMITTEE ON EDUCATION AND LABOR HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, ON AUGUST 1, 1984

Printed for the use of the Committee on Education and Labor

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OVERSIGHT HEARING ON MONITORING ACTIVITIES OF THE OFFICE OF SPECIAL EDUCATION AND REHABILITATION SERVICES

WEDNESDAY, AUGUST 1, 1984

House of Representatives,
Subcommittee on Select Education,
Committee on Education and Labor,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m., in room 2261, Rayburn House Office Building, Hon. Austin J. Murphy (chairman of the subcommittee) presiding.

Members present: Representatives Murphy, Biaggi, Simon, Williams, Bartlett, Erlenborn, and McCain.

Staff present: Judith L. Wagner, staff consultant; David Esquith, professional staff member; Tanya Rahall, staff assistant; and Pat Morrissey, minority counsel.

Mr. **Murphy**. Good morning. The Subcommittee on Select Education began oversight hearings on the Education of the Handicapped Act in September of 1979 and on the Rehabilitation Act throughout its long history.

This hearing is part of the process by which Congress learns about the implementation, results, effectiveness and adequacy of its past legislative efforts, including the policies implicit in its laws and the programs and activities carried out under those laws.

The subject of this morning's hearings is the monitoring activities of the Office of Special Education, and if we have time, rehabilitation services. These monitoring activities have been defined by the subcommittee to include the Memorandum of Understanding between the Office of Civil Rights within the Department of Education and the Office of Special Education Programs. This Memorandum was the subject of a similar hearing in 1980 and the subcommittee is interested in the status of its implementation since that time.

Monitoring activities are a critical part of the optimal functioning of any program, of course. Monitoring is conducted to ensure that the intended objectives of Congress and responsible Federal agency are being accomplished.

A program which is not monitored properly stands as a risk not only to the program beneficiaries, but also to the program's benefactors and that is the American public who, through their tax dollars, fund the programs. Failure to properly monitor a Federal program forces the public and its public servants into a very risky guessing game.

Instead of knowing whether a program is being implemented properly, we end up guessing whether or not it is achieving its objectives or any objectives. Once we begin guessing, our ability to objectively determine the strengths and limitations of a program are seriously at risk.

Considering the nature of the two programs we are discussing today and the vulnerability of the handicapped individuals affected by those programs, we should not, of course, take this risk.

Certainly there are limits to the time and resources that can and should be devoted by congressional monitoring of any Federal program. It would prove equally undesirable to overemphasize monitoring at the expense of the program itself. The challenge is to design an optimum monitoring system that provides the Federal agency with timely factual information concerning the nature of program implementation.

We are hopeful that the information that will be provided to us today will address both the strengths and limitations of our monitoring activities under these two important programs. The combined budgets of the Education of the Handicapped Act and the Rehabilitation Act are approximately $2.5 billion. Programs of this magnitude and importance to handicapped individuals demand and deserve a system of feedback that is adequately staffed and supported.

Our witnesses today will include representatives from the Department of Education, as well as representatives from the disability community. The Department of Education representatives will summarize their activities, as well as comment specifically on the memorandum of understanding, and the representatives from the disability community will share with us their assessment of the implementation of the Education of the Handicapped Act, including the memorandum of understanding.

Our first panel of witnesses is made up of Mr. Frederick Weintraub, the Assistant Executive Director of the Council for Exceptional Children, Department of Governmental Relations and the Chairman of the Coalition for Citizens with Developmental Disabilities, Educational Task Force; as well as Mr. Martin H. Gerry, an attorney with the law firm of Pickard and Gerry, and the former director of the Office of Civil Rights within the Department of Education.

Now, if the first two witnesses will take the witness stand. We should have other Members of Congress. Here is my good colleague, Mr. Bartlett, from Texas. If you gentlemen will suspend, we will ask Mr. Bartlett if he has his opening remarks prepared, and Mr. Biaggi of New York.

Mr. Bartlett, I have already given my opening statement.

Mr. BARTLETT. Thank you, Mr. Chairman.

I apologize for being late. It is, as well all know, it is a hectic time during the session—during the legislative session.

I am looking forward to today's hearing on the monitoring practices of the Office of Special Education and Rehabilitation Services. The extensive reauthorization schedule which we have had has prevented this subcommittee from learning more about the administrative practices of OSERS and, therefore, within that context, I anticipate that today's hearing will be quite useful.

Today is also the opportunity we have—the first opportunity we have had to review the tenure of Mrs. Will, who has been Assistant Secretary of Special Education and Rehabilitation Services in the Department of Education since May 1983. In 1 short year, under my observation, Mrs. Will demonstrated clearly her concern for the disabled and her ability to establish new priorities in legislation and resource allocations.

Mr. Chairman, I think at the beginning of this hearing in particular, as an oversight hearing, it is important that we stop and think for a minute and I would begin, I suppose, by commending Mrs. Madeleine Will for her unwavering determination and her seemingly tireless efforts.

There have been some remarkable accomplishments during her tenure. Madeleine Will developed a comprehensive program to improve the transition of handicapped youth and young adults from school to work; she has worked to improve the availability to parents and professionals of information on early intervention and education of handicapped infants.

Mrs. Will also developed an initiative to increase the employment of severely disabled individuals in competitive and supported employment. Furthermore, she has appointed a special assistant to promote outreach to parents of handicapped children so that parents might better understand both their rights and their responsibilities under 94-142.

In an effort to overcome one of the major impediments to achieving her goals in rehabilitation in the area of economic incentives, Mrs. Will invited to Washington 10 of the country's leading economists to deal with the questions on the economics of health and disability to advise her.

This is also the first opportunity this subcommittee has had this session to learn about the Office for Civil Rights in the Department of Education and particularly its efforts related to compliance and to enforcement activities in elementary and secondary institutions.

I commend Mr. Singleton for the work of his office during 1983. Now, according to information that I have received, in 1983, the Office logged 610 section 504 complaints pertaining to elementary and secondary institutions and closed 790 of those complaints. Given the overall number of complaints registered with your office in 1983—which is 1,233—in the total number closed, 1,466, over half of your enforcement activities are related to school-based complaints pertaining to the handicapped.

A similar trend is reflected in compliance reviews initiated by your office. Of the 165 compliance reviews initiated in 1983, 51 addressed the provision of a free, appropriate education for handicapped children and youth. Moreover, of the 174 compliance reviews completed, 47 addressed the provision of a free, appropriate public education.

Again, I am looking forward during this hearing to learning more about the monitoring practices of the Office of Special Education and the Rehabilitation Services and the Office for Civil Rights. This hearing, I think, represents a unique chance for the public and for the Congress to increase our understanding.

I appreciate the chairman's indulgence and I sincerely am glad that we are having this hearing.

Mr. **Murphy**. Thank you very much, Mr. Bartlett.

Mr. Biaggi, do you have an opening statement?

Mr. **Biaggi**. Yes, I do, Mr. Chairman. I would like to take this opportunity to commend you for calling this oversight hearing to examine the activities of the Department of Education in its monitoring of its programs for the handicapped.

Specifically, we are here to examine the working relationship between the two offices in the Department, the Special Education Programs Office and the Office of Civil Rights, and learn how they are discharging their responsibilities under the law.

What is disturbing is the fact that our initial research has revealed that the memorandum of understanding which outlines how these two offices will coordinate their responsibility under the law is being ignored. Congress was clear in its intent that these programs should be aggressively monitored to assure compliance with the law.

We were also clear in our intent that these programs at the State and local level be provided appropriate technical assistance in order to assure the provision of educational services to students. What is not clear is how this intent is being carried out.

It is both ironic and appropriate that today the House will consider the Labor-HHS appropriations bill, which contains funding for Public Law 94-142, and the Rehabilitation Act. This bill provides for $1.29 billion for handicapped education and $1.71 billion for rehabilitation, both increases over last year's funding levels. While funding is going up, monitoring of programs is going down.

While we are ready and willing to provide increased funding for these programs, we must be equally as willing to assure that the Department is discharging its responsibilities under law through the memorandum of understanding.

I know that my colleagues share my belief and that we need to encourage the best management possible of these programs, given the substantial Federal, State and local funds which are allocated to the programs. Our purpose is to assure that the handicapped receive the educational services they are guaranteed under the law and nothing less.

I look forward to today's testimony, Mr. Chairman, and hopefully, we will be able to assure all parties that the memorandum of understanding and congressional intent have been fully complied with, and if not, why not, and if not, let's make it happen.

Mr. **Murphy**. Thank you very much, Mr. Biaggi.

Mr. Weintraub, you may proceed.

STATEMENTS OF FREDERICK J. WEINTRAUB, ASSISTANT EXECUTIVE DIRECTOR, ACCOMPANIED BY BRUCE A. RAMIREZ, ASSISTANT DIRECTOR, DEPARTMENT OF GOVERNMENTAL RELATIONS, THE COUNCIL FOR EXCEPTIONAL CHILDREN; AND MARTIN H. GERRY, ATTORNEY, PICKARD & GERRY

Mr. **Weintraub**. Thank you, Mr. Murphy.

I would like to introduce Dr. Bruce Ramirez, who is the Assistant Director of CEC's Department of Governmental Relations, who is accompanying me today.

We thank you for the opportunity to appear before this panel to offer the views of the Consortium for Citizens with Developmental Disabilities, Education Task Force, respecting the current status of monitoring by the U.S. Department of Education of State compliance with both Public Law 94-142 and section 504.

The Consortium for Citizens with Developmental Disabilities, CCDD, is composed of national organizations interested in the welfare of persons with developmental disabilities. The organizations joining in this statement today represent the majority of parents and professionals concerned about the issues of education of the handicapped, and I will not go through that list. They are contained in the statement.

Before I begin the formal part of the statement, I would like to make two points. One is that we would hope that—we would share with Mr. Bartlett our greatest respect for the Assistant Secretary, Mrs. Will, and the Director of the Office of Special Education Programs, Dr. Cullar, in terms of their fundamental commitments to handicapped children. I would hope that our comments today, which may be critical of the problem, would not be seen directly as critical or questioning their commitment.

Second, we would hope that our statement would not be seen as a commitment to the past, and that is, that the answer to the problems is to return to the good old days of yesteryear. There we have many questions about how good the days of yesteryear were and we are concerned, not with the return to old practices, but the question of how do we have and establish a quality program of monitoring of our Federal laws.

Since the inauguration of Public Law 94-142, many of our organizations have worked with the Federal agencies and with the field toward the achievement of a fair balanced, and effective monitoring system to achieve compliance under Public Law 94-142. We wish to discuss the current status of the Federal aspect of that monitoring for compliance today.

The Department of Education has indicated in testimony before the House Subcommittee for the Departments of Labor, Health and Human Services in education appropriations that "The current system for monitoring State and local compliance with Public Law 94-142 is adequate."

Based upon our review of Department of Education annual reports to the Congress, appropriation hearing records, previous administrative reviews; second, meetings conducted by the Department on monitoring of States; and three, discussions with service providers and advocates, we have concluded that both the design and implementation of the present monitoring system has serious deficiencies.

We base our conclusion on an analysis of a number of features and I would like to now go through those. The first deals with the triannual onsite reviews. It has been the stated policy of the Department to monitor on site each State at least once every 3 years. As can be seen in figure 1 of our testimony on page 4, the Department has, since fiscal year 1982, consistently failed to conduct a sufficient number of onsite reviews to ensure that all States would be monitored triannually.

As a result, it has become the exception, rather than the rule, that a State is reviewed onsite by the Department every 3 years.

We might add that the Department has apparently abandoned its policy to conduct triannual onsite reviews. Specifically, the Department has indicated—I am sorry—as indicated in testimony before the House Subcommittee on Labor, Health and Human Services—revealed that it no longer establishes a specific target number of States for review.

While there is nothing sacred about the 3-year reviews, we are not clear as to what the Department's policy is. In testimony before the Congress, once again it indicated that it no longer establishes a specific target number of States for review because the present monitoring system allows for identification of those States in greatest need of monitoring or more frequent review.

Based upon our understanding of the present monitoring system, we have grave concerns about such a course of action. First, we are not aware of any criteria or procedures employed by the Department to select and prioritize States to be monitored during a given fiscal year. Second, although Public Law 94-142 has been in existence for nearly 10 years, the Department has yet to monitor many States onsite for a second time.

Finally, in light of the other problems discussed in other parts of our statement, we do believe that at least for the present triannual onsite reviews are both programmatically and administratively prudent.

Scope of monitoring. In order to avoid confusion about the standards to be used in monitoring, the Department developed the State Education Agency Monitoring Guide, which contains the 21 areas monitored by the Department. If you will note on page 7, we list those areas that the Department is to monitor, as well as the type of information necessary to document compliance with a given provision. However, when conducting an onsite review, the Department monitors only 11 of those 21 requirements. And if you will again note on page 7 in the second column, you will see those areas that are monitored.

In order to make it simple, there are 21 things that they are supposed to monitor; 11 are supposedly—only 11 of those 21 is what they do monitor.

Furthermore, it is our understanding that these 11 requirements are often compressed even further during the conduct of an onsite review. In other words, in many cases, not only are not 21 items monitored, not even 11 are monitored, sometimes less than 11.

Thus, not only are States monitored less often, but the scope of what is monitored has been reduced significantly.

In its sixth annual report to the Congress on the implementation of Public Law 94-142, the Department noted that the most important problem issues that needed to be resolved during the State plan review processes were in the areas of procedural safeguards, IEP's, least-restrictive environment, right to education, participation of private schoolchildren, confidentiality and general supervision. This is the Department saying those areas that are in the most critical need for monitoring, and yet these are exactly the areas that are no longer monitored.

Based upon these findings, we believe the Department needs to take steps to assure that all of the requirements under 94-142 are included in its program administrative reviews.

Parent advocate and professional input. In planning the program administrative review, the Department contacts statewide parent advocacy and professional groups requesting comments on the implementation of Public Law 94-142 in their particular State. While onsite, the Department also conducts an informal public hearing with interested parent advocacy and professional groups to discuss any major problems concerned with how a specific provision of the act is being implemented.

It is imperative that the Department continue to involve parent advocacy and professional groups in the program administrative review of the State receiving funds under Public Law 94-142. However, we believe that current practices need to be strengthened in order for this participation to be more meaningful and useful.

Some of the difficulties parent advocacy and professional groups have experienced include: The first is that monitoring that is in constant flux. What tends to happen is the Department announces that on a certain date, they are coming to the State of Illinois. What happens, then, is letters go out to parent groups and say: "If you would like to meet with us, we would be glad to meet with you," and a date is set. Then, what happens is the Department three or four times changes the schedule of the date that they are going; the result is the parents are left in confusion and the result is that it is very difficult to provide that kind of input. If you are going to go, you need to have schedules that people can meet and be committed to.

Second is a lack of advance information on the areas to be monitored. What happens is that it is just generally a statement to the parents and professionals and others saying, "Tell us what your problems are," and sometimes those problems have nothing to do with what the Department is, in fact, looking for. People don't know what the issues are that are being examined.

It is important to note that before the Department goes to a State, it puts together a profile of the State, which lays out what the past information is, what they identify as what some of the problems may be. It is our belief that that should be shared with parents, professionals, and others so that they can have something concrete to respond to when they talk to the Department.

Finally is the lack of followup regarding monitoring concerns and outcomes. What happens is the Department may meet with parents, professionals, and other groups; however, there is no feedback to them on what they learned from such a visit, nor is there feedback to them on what the final conclusions were of the Federal Government's monitoring effort.

Onsite reviews. Local educational agencies are not routinely visited. Under Public Law 94-142, the State Education Agency has the ultimate responsibility for ensuring the availability of a free appropriate public education to handicapped children throughout the State. Well, we would agree that monitoring under Public Law 94-142 should focus on the State Education Agency. It does not necessarily follow that such onsite reviews not include, as a matter of practice, selected visits to local education agencies, intermediate educational units and, where appropriate, State facilities, institutions, and other agencies providing services.

We do not believe a monitoring service that relies so heavily on State Education Agency data and information provides an adequate basis for determining whether the entire State is in compliance with the requirements under Public Law 94-142. Perhaps I can make it simple: Basically, under the present monitoring system, the Federal Government goes and visits the State Education Agency and talks to them about how adequate a job they are doing in monitoring Public Law 94-142 in their State. They do not go out and visit local school districts to see what the practice is. They do not go out in the sense and investigate the practice——

Mr. **Biaggi**. At any time, anywhere?

Mr. **Weintraub**. Not at—only if there are—in situations that dramatically call for that. Now, it used to be the practice that they went and randomly selected some school districts and went and looked, talked to teachers, talked to parents, looked at IEP's of children and got some sense of what the practice is. That gives you some basis to be able to talk to the State about what the State is doing.

I hate to use the analogy, but it is like going to the chicken coop and asking the fox how the chickens are doing. Sometimes you have to go at least peek around the corner and see whether there are any chickens in the coop.

Now, again, I would emphasize that under Public Law 94-142, the Federal Government does not have the direct responsibility of monitoring local school districts. We are not suggesting to you that the Federal Government ought to go out and visit 16,000 school districts and check for compliance. That is not what Public Law 94-142 says.

The Federal Government's responsibility is to monitor the State. All we are suggesting is that in order to have the information to know how well the State is doing, you have to have some basis of knowing what the practice is.

The final point I would make on this deals with the size of onsite monitoring teams and that is that during this year's appropriations hearings, the Department reported that in fiscal year 1983, there were 10 professionals who conducted onsite reviews, as compared to fiscal year 1980, when there were 40 individuals. The effect of such a drastic reduction—75 percent in personnel—can be seen in the number of staff involved in the onsite reviews.

Previous to the adoption of the current monitoring procedures, onsite monitoring teams were composed of an average of six members. During fiscal year 1984, the onsite teams averaged only three members. In fact, in most instances, these onsite teams consisted of only two individuals.

Admittedly, the data collection analysis the Department now carries out in preparation for an onsite review is of tremendous assistance in identifying those requirements of concern. However, we find it difficult to believe that two individuals, no matter how experienced, could be expected to conduct a comprehensive and thorough onsite review of compliance with Public Law 94-142 in a State.

The last point we would say on the Public Law 94-142—or two more points. One is the consistency of followup. Once an onsite review has been conducted, Department procedures call for the State Education Agency to receive a program review letter within 6 weeks. The program review letter contains the findings of the monitoring review and lists those areas where there are inconsistencies with Federal requirements. The State then has 4 weeks to submit a voluntary implementation plan.

Final negotiation approval of the voluntary implementation plan is to occur over the next 6 weeks. Although we do not know whether these are isolated cases, we are aware of several instances, which are noted in the testimony, where there have been delays of up to year between the onsite visit and the receipt of the program review letter.

Given the fact that the Department has but—and I would note an inconsistency in the testimony—that should be 10 professional State—assigned to the State monitoring section within the Division of Assistance to States, we are concerned that there may not be sufficient staff available to consistently do the job that is needed.

I will skip over the next point on evaluation of the monitoring process. What we are basically suggesting is that there needs to be some third party or independent evaluation, ongoing evaluation of the Federal Government's efforts on monitoring. Many States, by the way, are now contracting with outside firms and others to evaluate their own monitoring process, and we believe that the Federal Government ought to have some system where there is some independent review of the adequacy of the monitoring process they are carrying out.

I would like to just comment very briefly on the Memorandum of Understanding between the Office of Civil Rights and the Office of Special Education. In October 1980, the Department of Education promulgated a Memorandum of Understanding, MOU, between the Assistant Secretary for Civil Rights and the Assistant Secretary for Special Ed and Rehabilitative Services for the purpose of coordinating OSER's and OSER's overlapping responsibility for guaranteeing handicapped children a free appropriate public education and equal educational opportunity.

The MOU was a response to criticisms from providers and consumers that inconsistencies in policy, process and data relating to State plan approval, monitoring and complaint investigation results in confusion and incongruity in the field. While the MOU is a complex procedural document, the following 15 points represent that administrative behaviors the MOU requires of the Department and can thus be utilized to determine if the MOU is in full or in part being implemented.

The fascinating thing about the MOU is that it is written in behavioral terms. It is very simple to read it. It says that on certain dates certain things will happen. There will be the following number of people, the following kinds of things to judge whether compliance with it is taking place.

As I indicated to you, and I will not go through them, in my testimony, between pages 15 and 19, it lists the 15 things that the MOU requires. I can summarize the behavior very quickly to you. There is not one of the 15 things that is presently being complied with by either the Office of Civil Rights or the Office of Special Education Programs.

From our analysis, unless there is significant information we are not aware of, we must conclude that the MOU is presently being administratively and procedurally disregarded by the Department without having to declare that to be departmental policy. We find it ironic that only slightly less than a year ago, the administration amended the MOU, while at the same time not complying or not intending to comply with the MOU, even in an amended fashion.

We do not believe that compliance with the MOU is an end in itself. The issue is coordination between OCR and OSEP and public knowledge of the manner in which such coordination occurs. If the Department wishes to change the basis for such coordination through a new MOU, they should do so with appropriate public input, but simply to disregard what the public understands to be the rules of the game is not acceptable behavior.

Mr. Chairman, if I may conclude, many of our organizations have always pursued a reasonable balance between Federal, State and local responsibility for ensuring handicapped children a free appropriate public education. The Congress, in Public Law 94-142, carefully crafted such a delicate balance of responsibility for the varying levels of Government. While there have certainly been problems along the way, this delicate balance of responsibility has dramatically improved educational opportunity for over 4 million handicapped students.

However, after examining the present status of Federal monitoring and compliance activities, we must conclude that there has been in recent years a serious deterioration of the Federal Government's efforts in monitoring State compliance with Public Law 94-142 and section 504. We are not suggesting that all handicapped children in this country are all of sudden in great jeopardy, for as in a business, if one partner is ill, the other can maintain the business briefly until the partner is well. In this case, the well-being of handicapped children requires the speedy recovery of the Department of Education so that it can assume its responsibility.

The question that perplexes us most is why the deterioration described in this testimony occurred. There are some who would suggest that since the administration failed at repealing Public Law 94-142 and failed in deregulating it, it was, therefore, natural to simply cease to administer it.

The CCDD Education Task Force is not yet ready to accept this conclusion. We hope the administration, working with the Congress, recognizes the seriousness of the problems they face and take immediate steps to bring its monitoring and compliance activities into full health.

In so doing, they must attend to at least the following: One, the establishment of reasonable, coherent and enforceable policies and procedures detailing how the Federal monitoring of compliance system will work, such policies and procedures should be developed with public input, reported to the Congress, and made publicly available. There must be adequate qualified staff with sufficient resources to carry out the policies and procedures. Such staff must have the authority, with appropriate supervision, to carry out their responsibility.

The President has expressed his commitment to carry out Public Law 94-142, as has the Secretary. The Congress has shown consistent bipartisan commitment to this issue. It is important that as we strive to improve the process, that it not be a partisan issue.

Finally, efforts to deal with monitoring compliance must not be done at the expense of other responsibilities of OSER's and OCR. The present state of discretionary programs administered by OSEP, for example, if examined carefully, would raise many of the same concerns that have been documented in this testimony.

We cannot rob Peter to pay Paul when neither Peter nor Paul are well.

Finally, we are deeply saddened that we had to come before you today with this greatly disturbing testimony. This Nation, for decades, through Democratic and Republican administrations, has had just cause for great pride in Federal leadership directed at improving conditions for the handicapped citizens. We sincerely hope that this hearing will be the first step toward restoring Federal monitoring to a level deserving of such national pride.

Thank you, Mr. Chairman.

[Prepared statement of Frederick J. Weintraub follows:]

STATEMENT OF
THE EDUCATION TASK FORCE
OF THE
CONSORTIUM FOR CITIZENS WITH DEVELOPMENTAL DISABILITIES (CCDD):

American Association on Mental Deficiency
American Coalition of Citizens with Disabilities
American Speech-Language-Hearing Association
Association for Children and Adults with Learning Disabilities
Association for Retarded Citizens
Conference of Educational Administrators Serving the Deaf
The Council for Exceptional Children
Convention of American Instructors of the Deaf
Epilepsy Foundation of America
National Association of Private Residential Facilities for the Mentally Retarded
National Association of Private Schools for Exceptional Children
National Association of Protection & Advocacy Systems
National Council on Rehabilitation Education
National Education Association
National Rehabilitation Association
National Society for Children and Adults with Autism
United Cerebral Palsy Associations

to

THE SUBCOMMITTEE ON SELECT EDUCATION

of

THE U.S. HOUSE OF REPRESENTATIVES EDUCATION AND LABOR COMMITTEE

with respect to

MONITORING AND COMPLIANCE UNDER P.L. 94-142

August 1, 1984

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Mr. Chairman

We thank you for the opportunity to appear before this distinguished panel of the United States House of Representatives to offer the views of the Consortium for Citizens with Developmental Disabilities' Education Task Force respecting the current status of monitoring by the U.S. Department of Education of state compliance with both P.L. 94-142, The Education for All Handicapped Children Act of 1975, and, where appropriate, Section 504 of the Vocational Rehabilitation Act of 1973.

The Consortium for Citizens with Developmental Disabilities (CCDD) is composed of national organizations interested in the welfare of persons with developmental disabilities. The consortium is organized according to working task forces. The following members of the Education Task Force have endorsed this statement: American Association on Mental Deficiency; American Coalition of Citizens with Disabilities; American Speech-Language-Hearing Association; Association for Children and Adults with Learning Disabilities; Association for Retarded Citizens; Conference of Educational Administrators Serving the Deaf; The Council for Exceptional Children; Convention of American Instructors of the Deaf; Epilepsy Foundation of America; National Association of Private Residential Facilities for the Mentally Retarded; National Association of Private Schools for Exceptional Children; National Association of Protection & Advocacy Systems; National Council on Rehabilitation Education; National Education Association; National Rehabilitation Association; National Society for Children and Adults with Autism; and United Cerebral Palsy Associations.

Since the inauguration of P.L. 94-142, many of our organizations have worked with the federal agencies and with the field toward the achievement of a fair, balanced, and effective monitoring system to achieve compliance under P.L.

94-142. We wish to discuss the current status of the federal aspect of that monitoring for compliance today.

Secondly, we wish to review in this testimony the current degree of adherence to the Memorandum of Understanding of 1980, which relates to monitoring of both P.L. 94-142 and Section 504. Parenthetically, when the Department of Education came into being, many of our organizations strongly urged that the first Secretary of Education, Shirley Hufstedler, inaugurate a Secretary-level Task Force to wrestle with the coordination and refinement of monitoring respecting these two statutes, and urged that such a task force include the Office of Special Education and Rehabilitative Services (OSERS), the Office of Civil Rights (OCR), and other involved agencies, along with representatives of the Department of Justice. The Secretary did so, and the Memorandum of Understanding between OSERS and OCR, which will be discussed today, was a direct result of that task force's final report to the Secretary.

MONITORING FOR COMPLIANCE UNDER P.L. 94-142

The Department of Education has indicated in testimony before the House Subcommittee for the Departments of Labor, Health and Human Services and Education Appropriations that, "the current system for monitoring state and local compliance with P.L. 94-142 is adequate." Based upon our (1) review of Department of Education annual reports to the Congress respecting the implementation of P.L. 94-142, appropriations hearings records, and previous administrative reviews; (2) meetings conducted by the Department on the monitoring of states under P.L. 94-142; and (3) discussions with service providers and advocates, we have concluded that both the design and implementation of the present monitoring system have serious deficiencies.

We base our conclusions on an analysis of the following features:

- Triannual on-site reviews;
- Scope of monitoring;
- Parent, advocate and professional input;
- On-site reviews;
- Size of on-site monitoring team;
- Consistency of follow-up; and
- Evaluation of the monitoring process.

Triannual On-Site Reviews

It has been the stated policy of the Department to monitor on-site each state (including the Bureau of Indian Affairs as well as the insular areas receiving Part B funds) at least once every three years. As can be seen in Figure 1 the Department has, since fiscal 1982, consistently failed to conduct a sufficient number of on-site reviews to ensure that all states would be monitored triannually. As a result, it has become the exception rather than the rule that a state is reviewed on-site by the Department every three years. For example, it has now been more than four years since California, Hawaii, Minnesota, Texas, American Samoa, Guam, Trust Territories, and Virgin Islands have been reviewed on-site (Table A). There are also another 14 states, last visited in 1981, (i.e., Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Massachusetts, Nevada, Ohio, Oklahoma, Rhode Island, South Carolina, Vermont, and West Virginia) for whom on-site reviews would have been expected this year.

We might add that the Department has apparently abandoned its policy to conduct triannual on-site reviews. Specifically, the Department, as indicated

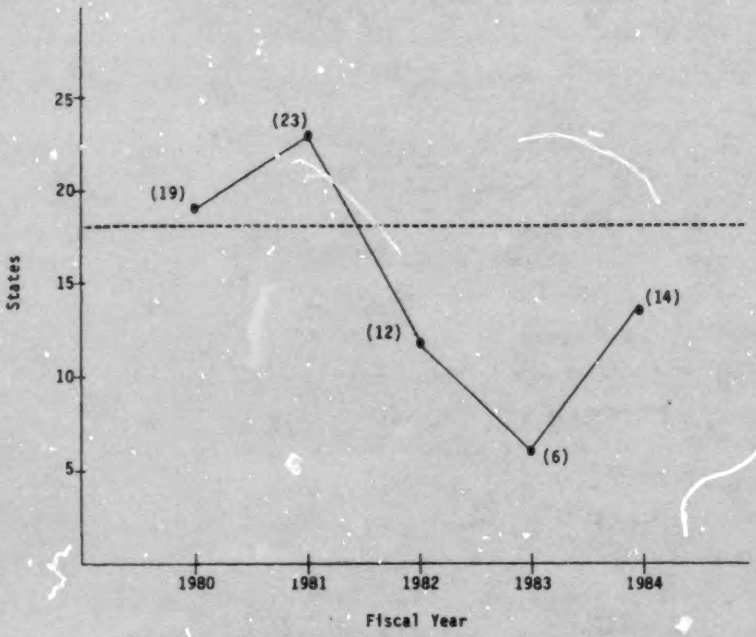

Figure 1. Number of states reviewed, on-site, FY 1980-1984. The dotted line represents the number of states to be visited annually in order to conduct triannual on-site reviews.

Table A

States Receiving Site-Visits Under New Monitoring Procedures as of March 1, 1984

FY 1982 (Oct. 1, 1981-Sept. 30, 1982)	FY 1983 (Oct. 1, 1982-Sept. 30, 1983)	FY 1984 (Oct. 1, 1983-Sept. 30, 1984)	Yet to be Visited and Date of Last Site Visit
Alabama	Connecticut	Arizona	Arkansas (4/81)
Alaska	District of Columbia	Idaho	California* (4/80)
Colorado	Iowa	Illinois	Delaware (1/81)
Florida	Michigan	Montana	Georgia (2/81)
Maine	New York	New Hampshire	Hawaii (2/80)
Mississippi	Pennsylvania	North Carolina	Indiana (1/81)
Missouri		North Dakota	Kansas (3/81)
Nebraska		Puerto Rico	Kentucky (12/80)
New Jersey		South Dakota	Louisiana** (5/79)
Oregon		Utah	Massachusetts (1/81)
Tennessee		Virginia	Minnesota (4/80)
Bureau of Indian Affairs		Washington	Nevada (2/81)
		Wisconsin	New Mexico***
		Wyoming	Ohio (5/81)
			Oklahoma (2/81)
			Rhode Island (5/81)
			South Carolina (1/81)
			Texas* (2/80)
			Vermont (5/81)
			West Virginia (3/81)
			American Samoa (1/80)
			Guam (1/80)
			Trust Territories (1/80)
			Virgin Islands (4/80)

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*OSEP conducted a pre-site visit (i.e. to understand the special education delivery system) to California in April 1984 and intends to conduct a pre-site visit to Texas in September 1984.

**OSEP conducted an on-site review in Louisiana in March 1981 to pilot-test the then new monitoring.

***New Mexico has not participated under Part B of EHA since 1978; however, the state is in the process of developing a state plan for participation beginning fiscal 1984.

in testimony before the House Subcommittee on Labor, Health and Human Services and Education Appropriations, revealed that it no longer establishes "a specific target [number of states] for review" because the present monitoring system allows for the identification of those states in "greatest need of monitoring" or "more frequent review." Based upon our understanding of the present monitoring system we have grave concerns about such a course of action. First, we are not aware of any criteria or procedures employed by the Department to select and prioritize states to be monitored during a given fiscal year. Secondly, although P.L. 94-142 has been in existence for nearly 10 years the Department has yet to monitor many states on-site for a second time. Lastly, in light of the other problems discussed in other parts of our statement we believe triannual on-site reviews are both programmatically and administratively prudent at this time.

Scope of Monitoring

In order to avoid confusion about the standards to be used in monitoring, the Department developed the "State Education Agency Monitoring Guide" which contains the 21 areas monitored by the Department (Table B) under P.L. 94-142, as well as the type of information necessary to document compliance with a given provision. However, when conducting an on-site review the Department monitors only those eleven requirements for which the SEA has direct implementation responsibility (Table B-State Agency Specific Review). Furthermore, it is also our understanding that these eleven requirements are often compressed even further during the conduct of the on-site review. In such instances states are informed that there is no presumption of compliance for those areas not actually monitored.

Table B

P. L. 94-142 Requirements Contained in the
Department of Education's "SEA Monitoring Guide" as Compared to Those
Requirements Covered in the SEA On-Site Review ("State Agency Specific Review")

SEA Monitoring Guide	State Agency Specific Review
SEA General Administrative Procedures	
- State Plan	- State Advisory Panel
- State Advisory Panel	- Monitoring and Correcting Deficiencies
- Monitoring of Part B Provision	- Complaint Resolution
- Complaint Management System	- General Supervision
- General Supervision	- Approval of Local Applications
- LEA Applications	- Pre-school Incentive Grants
- Pre-school Incentive Grants	- Administration of Funding by the SEA
- Administration of Funds by SEA	- Administration of State Operated/ Supported Programs
- Administration of Other Federal Programs Consistent with FAPE	- Comprehensive System of Personnel Development (CSPD)
SEA Administration of Specific Content Areas of P. L. 94-142	- Review of Hearings by SEA
- Right to Education	
- Priorities	
- Child Identification, Location and Evaluation	
- Individualized Education Programs (IEPs)	
- Procedural Safeguards	
- Confidentiality	
- Protection in Evaluation Procedures	
- Least Restrictive Environment	
- Comprehensive System of Personnel Development (CSPD)	
- Participation of Children Placed in Private Schools by Their Parents	
- Placement in Private Schools	
- Administration of Funds by LEAs	

While it might be contended that the eleven areas monitored on-site encompass all of the specific areas listed in the "SEA Monitoring Guide", such a procedure would seem to preclude any meaningful examination of the various substantive requirements (i.e., right to education, child identification, individualized education programs (IEPs), procedural safeguards, etc.). For example, if one compares the requirements for IEPs it becomes quite clear that the "State Agency Specific Review" produces information of a general procedural nature, while the "SEA Monitoring Guide" provides a more indepth examination of both the substantive and procedural aspects of this particular requirement.

Rather than signal a need to give less attention to the substantive requirements of the Act, the fiscal 1982 administrative program reviews conducted by the Department, as well as the Department's review of the 1984-86 state plans, both indicate that states continue to experience serious problems in many of these substantive areas. Of the 12 states reviewed in 1982 more than half were found to be in noncompliance with the least restrictive environment, procedural safeguards, and IEP requirements, while slightly less than half were in noncompliance with the right to education requirements (Table C). With respect to the review of state plans, the Department reported in its Sixth Annual Report to Congress on the Implementation of P.L. 94-142 (p. 71) that the "most important problem issues" that needed to be resolved during the state plan review process were in the areas of procedural safeguards, IEPs, least restrictive environment, right to education, participation of private school children, confidentiality, and general supervision. Based upon these findings, we believe the Department needs to take steps to ensure that all of the requirements under P.L. 94-142 are included in its program administrative reviews.

Table C

Areas of Noncompliance Identified During the Fiscal 1982 Monitoring Cycle

Requirements	Number of States with Areas of Noncompliance in Program Review Letters (PRLs)
*State Advisory Panel	1
*Monitoring	10
*Complaint Management	7
*General Supervision	10
*LEA Applications	2
*SEA Administration of Funds	2
*State-Operated and State-Supported Programs (SOPS)	5
*Comprehensive System of Personnel Development (CSPD)	1
Right to Education (FAPE)	5
Child Identification, Location, and Evaluation	1
Individualized Education Program (IEP)	7
Procedural Safeguards	9
Confidentiality	2
Protection in Evaluation Procedures (PEP)	1
Least Restrictive Environment (LRE)	8
Participation of Private School Children	2
Placement in Private Schools	1
LEA Administration of Funds	1

Source: U.S. Department of Education, Sixth Annual Report to Congress on the Implementation of P.L. 94-142: The Education for All Handicapped Children, P. 74. Starred items constitute the core of the State Agency Specific Review.

Parent, Advocate and Professional Input

In planning the program administrative review, the Department contacts statewide parent, advocacy, and professional groups requesting comments on the implementation of P.L. 94-142 in their particular state. While on-site the Department also conducts an informal public meeting with interested parent, advocacy, and professional groups to discuss any major problems concerned with how a specific provision of the Act is being implemented, as well as any exemplary statewide or local practices being administered in the state.

It is imperative that the Department continue to involve parent, advocacy, and professional groups in the program administrative review of the states receiving funds under P.L. 94-142; however, we believe the current practices need to be strengthened in order for this participation to be more meaningful and useful. Some of the difficulties parent, advocacy, and professional groups have experienced include:

(1) A monitoring schedule that is in constant flux. The Department's monitoring schedule has been subject to such frequent and sudden changes that one cannot reasonably be certain that a state will actually be monitored on-site as originally announced. While it is our understanding that restricted travel funds are primarily to blame for such scheduling changes, many of our organizational counterparts in the states have had to endure numerous cancellations and delays as they have attempted to coordinate with the Department so far as monitoring is concerned.

(2) Lack of advance information on the areas to be monitored. Noticeably absent from the Department's efforts to involve parent, advocacy, and professional groups is the provision of advance information on the

specific areas under consideration during the program administrative review. In the course of planning and preparing for the on-site review the Department develops "a state profile" which contains information on a given state's implementation of the basic requirements of P.L. 94-142. This document or some other document would, if routinely provided in advance to parent, advocacy, and professional groups, be invaluable in terms of focusing attention on those requirements under review by the Department.

(3) Lack of follow-up regarding monitoring concerns and outcomes. In spite of these previously mentioned difficulties, many state-wide parent, advocacy, and professional groups take the time to become involved in the monitoring process; however, all too often they do not receive any feedback regarding their specific concerns, nor are they informed about the Department's findings. We do not believe it is helpful to the parties involved or the actual monitoring itself for there to be a lack of follow-up regarding monitoring concerns or the monitoring findings.

On-Site Reviews

Local Educational Agencies Not Routinely Visited. Under P.L. 94-142 the state educational agency has the ultimate responsibility for ensuring the availability of a free appropriate public education to handicapped children throughout the state. While we might agree that monitoring under P.L. 94-142 should focus on the SEA, it does not necessarily follow that such on-site reviews not include as a matter of practice visits to selected local educational agencies (LEAs), intermediate educational units (IEUs) and, where appropriate, other institutions and facilities providing special education and related services to handicapped children and youth.

Previous to the adoption and implementation of the current monitoring procedures, the Department selected and routinely visited LEAs, IEUs, as well as public and private facilities (residential and nonresidential) serving the handiapped as a part of its compliance reviews to determine the degree to which state policies, procedures, and practices were consistent with federal requirements. The Department now reviews selected LEA applications, state monitoring reports, etc. on file at the SEA to determine the extent to which the SEA is complying with the requirements of P.L. 94-142 "for which it has direct responsibility," and only under special circumstances are visits to LEAs and other agencies and facilities conducted.

We do not believe a monitoring system that relies so heavily on SEA data and information provides an adequate basis for determining whether the entire state is in compliance with the requirements under P.L. 94-142. We might add that at this time it does not appear that most states have acquired the necessary experience to monitor effectively. Of the twelve states reviewed by the Department in fiscal 1982, ten were cited for noncompliance so far as monitoring is concerned. For these reasons we believe the current monitoring procedures should be revised to include, at the very least, a sampling of LEAs as well as other institutions and facilities providing special education and related services, and that the Department continue its practice of including visits to state operated programs when conducting on-site reviews.

Size of On-Site Monitoring Team. During this year's appropriations hearings the Department reported that in fiscal 1983 there were 10 professionals who conducted on-site reviews as compared to fiscal 1980 when there were 40 individuals. The effect of such a drastic reduction (75 percent) in personnel can be seen in the number of staff involved in the on-site reviews. Previous to the adoption of the current monitoring procedures, on-site monitoring teams were composed of an average of six members. During fiscal 1984, the on-site teams averaged only three members. In fact, in most instances these on-site teams consisted of only two individuals. Admittedly, the data collection and analysis the Department now carries out in preparation for an on-site review is of tremendous assistance in identifying those requirements of concern; however, we find it difficult to believe that two individuals, no matter how experienced, could be expected to conduct a comprehensive and thorough on-site review.

We further find the idea that two individuals are sufficient to conduct an on-site review inconsistent with the Department's contention that it now focuses its monitoring on those states in "greatest need of monitoring" or "more frequent review." If this, in fact were the case, we would expect that such states by definition would necessitate a greater number of individuals to conduct the on-site review.

Consistency of Follow-up

Once an on-site review has been conducted Department procedures call for the SEA to receive a Program Review Letter (PRL) within six weeks. The PRL contains the findings of the monitoring review and lists those areas where there are inconsistencies with federal requirements. The state then has four weeks to submit a Voluntary Implementation Plan (VIP). Final negotiation and approval of the VIP is to occur over the next six weeks.

Although we do not know whether these are isolated cases, we are aware of several instances (i.e., Michigan, Alaska, the District of Columbia and the

Bureau of Indian Affairs) where there have been delays of up to a year between the on-site visit and the receipt of the PRL. Given the fact that the Department has but nine professional staff assigned to the State Monitoring Section within the Division of Assistance to States, we are concerned that there may not be sufficient staff available to consistently prepare PRLs within the stated timelines as well as follow-up on the VIP to ensure that the monitoring review is actually closed-out.

Evaluation of the Monitoring Process

As was indicated earlier OSEP monitoring of states has undergone conceptual and procedural changes. In terms of evaluation of the monitoring process the Department in its Sixth Annual Report to Congress on the Implementation of Public Law 94-142 stated:

> ...Internal evaluation is achieved through third-party examination of SEP team procedures and their effectiveness, as well as the appropriateness of the materials and data used for monitoring. External evaluation is achieved in part through structured feedback from members of the primary group monitored by SEP, the State directors of special education. The results of internal and external evaluation indicate that the process is working to the benefit of the purposes of the law and is improving administration of special education programs and the provision of related services throughout the country. (p. 75)

Given some of the problems we have discussed, we do not consider an evaluation process that relies principally on the feedback of those being monitored (i.e., state directors of special education) sufficient or appropriate. We believe it would be extremely useful for the Department to evaluate the monitoring process it employs through the utilization of an outside third party. Should the Department fail to initate such an evaluation, we would strongly urge the Congress to request a review by the U.S. General Accounting Office.

COORDINATION BETWEEN THE OFFICE OF CIVIL RIGHTS AND THE OFFICE OF SPECIAL EDUCATION PROGRAMS

In October, 1980, the Department of Education promulgated a Memorandum of Understanding (MOU) between the Assistant Secretary for Civil Rights and the Assistant Secretary for Special Education and Rehabilitative Services for the purpose of coordinating OCR's and OSER's overlapping responsibilities for guaranteeing handicapped children a free appropriate public education and equal educational opportunity, as required by P.L. 94-142 (Part B of the Education of the Handicapped Act (EHA)) and the Vocational Rehabilitation Act of 1973 (Section 504). The MOU was a response to criticism from providers and consumers that inconsistencies in policy, process, and data relating to state plan approval, monitoring, and complaint investigation resulted in confusion and incongruity in the field.

While the MOU is a complex procedural document, the following fifteen points represent the administrative behaviors the MOU requires of the Department, and can thus be utilized to determine if the MOU is in whole or in part being implemented.

1. The MOU requires OCR and OSERS to each designate a full time coordinator with responsibility for the day-to-day implementation of the MOU. These individuals are to meet at least weekly. It is our understanding that OCR and OSERS only have part-time coordinators. While these part-time coordinators meet, it is not on a weekly or scheduled basis.

2. OCR is required to designate a person in each regional office to assist Office of Special Education Programs (OSEP) staff. While OSEP does not have a regional office configuration, it is required to designate OSEP

staff who will serve as contact points for Regional OCR staff. To the best of our knowledge OCR has designated such a person in each regional office. OSEP apparently has not designated contact staff in Washington, D.C. The system is apparently half in place, but more importantly is not utilized. OCR policy or procedure requires that all complaint communication go directly from the regional office to the Assistant Secretary for Civil Rights.

3. OCR will investigate complaints filed with or referred by OSEP. OCR will notify OSEP of complaints filed with OCR. OCR will also notify the state education agency. Since October 1980, 150 complaints have been referred by OSEP to OCR. One hundred nineteen of those have been closed out and 31 are still pending. Since the vast majority of complaints to OCR are negotiated at the Regional Office level and not referred to Washington, D.C. they are not reported to OSEP. To the best of our knowledge SEA's are not being notified by OCR of complaints filed from their state.

4. Complaints based solely on Section 504 are a sole responsibility of OCR for resolve. Complaints involving both Section 504 and the Education of the Handicapped Act shall be coordinated in their resolve and complaints that are solely EHA-based are the responsibility of OSEP with OCR advice. There appears to be little, if any, OCR and OSEP cooperation or coordination in complaint investigation.

5. Each agency is to provide technical assistance and advice to the other on investigating complaints. It appears that this has not occurred since 1980.

6. Within 5 days (changed to 10 days March 30, 1983) of receipt of a proposed state plan OSEP will provide OCR with a copy for review. While this did become practice, in the most recent round of state plan approval the plans were not sent to OCR.

7. OCR is required to report to OSEP within 15 days (expanded to 25 days on March 30, 1983) all enforcement activities within the state relating to the state plan. This is not presently occurring.

8. OSEP and OCR are to cooperate in reviewing state plans. While primary responsibility rests with OSEP, OSEP must notify OCR of its intentions to approve or disapprove the plan. OCR has time to concur or seek modifications. Disputes are to be resolved by the Assistant Secretaries. The purpose of this procedure is to faciliate that Section 504 and P.L. 94-142 work in harmony and that in enforcing these laws federal agencies use consistent criteria for determining compliance. The Singleton Memo of March 30, 1983, repealed this provision and declared that "OCR has no formal role in the review or approval of state plans" and "OCR is in no way bound by the provisions of the state plans in the conduct or conclusions of its subsequent investigations."

9. By October 1 of each year, OCR and OSEP will develop an annual compliance review activities plan including methods of selecting sites for compliance visits by each office, identification of priority problem issues to be considered, how each Office will assist the other and describe the joint OCR-OSEP visits that will take place. To the best of our knowledge one plan was developed in 1981, and there was one joint OCR-OSEP site visit.

10. OCR and OSEP are required to consult with each other in developing remedial strategies. Concurrence between Offices is to be sought and achieved. Our understanding is that this occurs sporadically and is the exception rather than the rule.

11. There must be an annual joint training plan for OSEP and OCR staff who perform functions covered by the MOU. To the best of our knowledge this plan has never been developed.

12. The OCR and OSEP coordinators are to meet on a quarterly basis to determine areas in which joint policy development are necessary. Procedures to be followed for development of such policy are set forth in the MOU. It is our understanding that this was only done in the first year.

13. Data shall be exchanged between OCR and OSEP. There is to be a data planning group that meets at least every six months to review data needs, data instruments under development, and strategies for data use and management. By January 1, of each year, a jointly developed annual data analysis plan is to be developed and submitted to the Assistant Secretaries. It is our understanding that there is presently no formal or informal cooperation or coordination between OSEP and OCR on matters relating to data collection or utilization.

14. There is to be established an annual joint technical assistance plan submitted to the Assistant Secretaries by August 1, of each year, that responds to the technical assistance needs of SEAs, LEAs, other recipients, handicapped children and their parents, teachers, disabled

consumers, providers, and other persons. To the best of our knowledge no such plan has been developed or submitted.

15. There is to be a report by July 1, of each year, by the coordinators to the Assistant Secretaries on the effectiveness with which the MOU is being implemented. It is our understanding that at least a draft report was developed in the first year, but that nothing subsequent has occurred.

From our analysis, unless there is significant information we are not aware of, we must conclude that the MOU is presently being administratively and procedurally disregarded by the Department without having declared that to be Departmental policy. We find it ironic that only slightly less than a year ago the Administration amended an agreement that they were not complying with and did not intend to comply with even in an amended fashion.

We do not believe that compliance with the MOU is an end in itself. The issue is coordination between OCR and OSEP and public knowledge of the manner in which such coordination occurs. If the Department wishes to change the basis for such coordination through a new MOU they should do so with appropriate public input. But, simply to disregard what the public understands to be the rules of the game is not acceptable behavior.

Conclusion

Mr. Chairman, many of our organizations have always pursued a reasonable balance between federal, state, and local responsibility for assuring handicapped children a free appropriate public education. The Congress in P.L. 94-142 carefully crafted such a delicate balance of responsibility for the varying levels of government. While there have certainly been some problems along the way, this delicate balance of responsibility has dramatically improved educational opportunity for over four million handicapped students. However, after examining the present status of federal monitoring and compliance activities, we must conclude that there has been in recent years a serious deterioration of the federal governments efforts in monitoring state compliance with P.L. 94-142 and Section 504 of the Vocational Rehabilitation Act of 1973. We are not suggesting that all handicapped children in this country are all of a sudden in great jeopardy, for as in a business, if one partner is ill the others can maintain the business briefly until the partner is well. In this case the well-being of handicapped children requires a speedy recovery of the Department of Education so it can assume its responsibilities.

The question that perplexes us the most is, why did the deterioration described in this testimony occur? There are some who would suggest that since the Administration failed at repealing P.L. 94-142 and failed at deregulating it, it was therefore natural to simply cease to administer it. The CCDD Education Task Force is not yet ready to accept this conclusion. We hope the Administration, working with the Congress, will recognize the seriousness of the problems they face and take immediate steps to bring its monitoring and compliance activities into full health. In so doing they must attend to at least the following:

1. The establishment of reasonable, coherent, and enforceable policies and procedures detailing how the federal monitoring and compliance system will work. Such policies and procedures should be developed with public input, reported to the Congress, and made publicly available.

2. There must be adequate qualified staff with sufficient resources to carry out the policies and procedures.

3. Such staff must have the authority, with appropriate supervision, to carry out their responsibilities.

4. The President has expressed his commitment to carry out P.L. 94-142, as has the Secretary. The Congress has shown consistent bipartisan commitment to this issue. This should not be a partisan issue.

5. Efforts to deal with monitoring and compliance must not be done at the expense of other responsibilities of OSERS and OCR. The present state of discretionary programs administered by OSEP, for example, if examined carefully, would raise many of the same concerns that have been documented in this testimony regarding P.L. 94-142 and Section 504. We cannot "rob Peter to pay Paul" when neither Peter nor Paul are well.

Finally, we are deeply saddened that we had to come before you today, with this greatly disturbing testimony. This nation for decades, through Democratic and Republican Administrations, has had just cause for great pride in federal leadership directed at improving conditions for its handicapped citizens. We sincerely hope that this hearing will be the first step toward restoring federal monitoring to a level deserving of such national pride.

Mr. **Murphy**. Thank you very much, Mr. Weintraub.

If the members agree, we will withhold questioning until Mr. Gerry has testified.

Mr. **Bartlett**. Mr. Chairman, if it would be the will of the chairman, I do have one question—I suppose comment—as to one of the last statements that Mr. Weintraub made and then we can go on with some of the questions about some of the substance of the testimony.

I suppose I was disturbed—I was at the White House when you were at the White House when the President fully supported Public Law 94-142 and, in fact, went one step further and said that he was issuing the declaration of no amendments to either laws or regulations, and yet—and you say that you want to keep it nonpartisan and not partisan attacks and then you say words like: "As the administration," and I have to put it in quotes because I am so shocked that you would say it since the administration "failed at repealing Public Law 94-142 when the administration"—the President of the United States was in the room; I heard it with my ears and you heard it with your ears, of his support for Public Law 94-142 of Mrs. Will's enormous and magnificent support for enforcing Public Law 94-142 and massive progress in that enforcement. The President's declaration of support for not only Public Law 94-142, but also in its present form, with no amendments in regulations or in statute. I suppose it is a little bit disturbing to then take it from the perspective of implying that the President had tried to repeal it in some——

Mr. **Weintraub**. Well, I would not—sometimes, as you know, Mr. Bartlett, it is difficult to separate—I did not say the President. I said the administration. If you remember, there was legislation proposed by the administration early on to, in fact, repeal Public Law 94-142. There was legislation which this Congress rejected. There was legislation proposed to amend——

Mr. **Bartlett**. Which the President rejected in the White House conference.

Mr. **Weintraub**. If you remember, the President rejected it following the effort to deregulate it. I don't—and as I say in my last part of this, that the President has indicated his support. The Secretary has indicated his support. I wanted to disassociate ourselves—and you will note in the sentence following the one you quoted—that we said we are not ready to accept this conclusion. We would like it not to be the conclusion, however, I would suggest to you that there are people out in the field who see the question of the failure to monitor the law in some substantive way as a natural progression from the events of 1981 and 1982.

We hope that is not the case. We don't believe that is Mrs. Will's intention; we don't believe that is Dr. Cullar's intention; and that is why we think this issue needs to be resolved in a bipartisan fashion as rapidly as possible so that the conclusion is not reached that this is a part of some large scenario.

Mr. **Bartlett**. Conspiracy theory that you would propose for us today.

Well, I appreciate your clarification, I think. I do think we need to examine the issues and determine what is the best monitoring system for the Department. I think some substantial improvement has been made since May of 1983, and indeed, since 1979. But we will get into those specifics.

I did want to make sure that we covered the point as to the President's support for these issues and for handicapped children, which has been demonstrated on numerous occasions.

Mr. MURPHY. We are also joined on the panel by Congressman John Erlenborn. Thank you, Mr. Erlenborn. Do you have an opening statement, John?

Mr. ERLENBORN. No; I don't. Thanks, Mr. Chairman.

Mr. MURPHY. Thank you. OK.

Mr. Gerry, you may proceed.

Mr. GERRY. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, first let me express my appreciation for your invitation to testify this morning on the subject of monitoring by the U.S. Department of Education to determine the compliance of State education agencies to part B of the Education Handicapped Act, its implementing regulations and provisions relating to program administration included in the education department general administrative regulations.

I understand that the subcommittee is also reviewing the coordination within the Department of compliance activities under part B and under section 504 of the Rehabilitation Act of 1973 and I would also like to comment on that briefly.

Because I am not testifying in a representative capacity, I would like to outline my experience with Federal and State monitoring activities under the act briefly for the subcommittee before commenting on the present performance of the Department of Education in this important area.

During the period 1969 to 1977, I served in a variety of positions within the Office of the Secretary of the Department of Health, Education and Welfare. From 1973 to 1974, I served as Deputy Director of the Office for Civil Rights, and in 1975, I was appointed Director of that office by President Ford.

While serving as Deputy Director and Director of OCR, I was assigned principal responsibility by the Secretary for the development of regulations to implement section 504 of the Rehabilitation Act of 1973. In fact, virtually all of the regulatory development activities under that statute had been completed at the time of my resignation from the Department in February of 1977.

During the same period, I was also charged by the Secretary of Health, Education and Welfare with oversight responsibility for the development of the regulations by the Bureau for the Education of the Handicapped to implement Public Law 94-142.

As regulations for section 504 and Public Law 94-142 were being developed concurrently by the Office for Civil Rights and the Bureau for the Education of the Handicapped, Dr. Edwin Martin, who was then the Associate Commissioner of Education in charge of BEH, and I discussed at length the question of the effective coordination and implementation of the two statutes insofar as they both applied to the operation of elementary and secondary education programs.

In order to best use the existing resources of our two agencies, and in order to take advantage of the different enforcement procedures incorporated in the two statutes, Dr. Martin and I developed an interagency agreement on the joint implementation of those statutes. Under the terms of that agreement, which was signed in 1976, OCR agreed to take responsibility for the investigation of compliance and the conduct of compliance reviews with respect to the adherence of both local education agencies, LEA's, and State-operated programs with the requirements of the two statutes.

In furtherance of this agreement BEH was to provide technical staff support to regionally based OCR investigative teams during all phases of their activities: initial investigation, formulation of findings, negotiation for voluntary compliance, and if necessary, enforcement.

The final element of our joint plan in this area was that where voluntary compliance efforts were unsuccessful, the two agencies would use the enforcement options available under section 504—that is, an administrative hearing procedure leading to a targeted LEA fund cutoff or suit by the Department of Justice seeking injunctive relief, rather than the indirect SEA-oriented remedies available under Public Law 94-142, which are very severe and which involve funds that are paid to an entire State, rather than to a specific school district.

A second major section of the joint agreement between OCR and BEH addressed the compliance of State education agencies with the provisions of both statutes. These agencies, of course, have direct statewide compliance responsibilities under Public Law 94-142 and indirect responsibility for Statewide compliance under section 504, derived from the so-called "pass through" of Federal funds to both LEA's and other State-operated programs.

In this area, it was agreed that BEH was to assume responsibility for the investigation of complaints and the conduct of compliance reviews with respect to the adherence of State education agencies with the requirements of both statutes. OCR was to provide technical staff support to BEH in those section 504 compliance areas not coextensive with Public Law 94-142—program accessibility, for example, architectural barrier issues and nondiscrimination in employment being two key examples—and in the formulation of joint findings and subsequent negotiation for voluntary compliance.

Enforcement options under both statutes were to be available to BEH which would select the enforcement strategy most appropriate in light of the particular violations that were identified.

By its terms, the 1976 agreement was to become effective with the publication of final regulations under each of the two statutes. After leaving the Department in 1977, I was informed by Dr. Martin that the agreement had been unilaterally canceled by the Office for Civil Rights at the beginning of the Carter administration chiefly because of its political history.

In October of 1980, OCR and BEH, now in the Department of Education, entered into a formal memorandum of understanding which lacked the direct delegations of authority contained in the 1976 agreement, but which did call for greatly improved coordination between the two agencies, and Mr. Weintraub has listed 15 important provisions of that agreement.

On the basis of my familiarity with both the past and current implementation by the Office of Special Education Programs and OCR of the October 1980 MOU, I am convinced that the Office for

Civil Rights has unwisely and unilaterally withdrawn from or defaulted on some important obligations contained in that agreement.

I continue to believe that the effective coordination between these two agencies can and would dramatically improve the compliance monitoring capabilities of both.

My direct involvement with the compliance monitoring activities of the Bureau for the Education of the Handicapped began in 1979. During that year, the Children's Defense Fund and other advocacy organizations, together called the Education Advocates Coalition, issued a major report critical of the operations of the Bureau in five major areas related to monitoring and enforcement of Public Law 94-142 requirements: monitoring procedures, lack of enforcement, failure to issue policies, targeting of resources, and the assignment of training and staff being the five areas.

At Dr. Martin's request, and working closely with staff in the division of assistance to States, I agreed to assist BEH in a self-evaluation of its current monitoring activities and in the development of a plan to overcome any identified problems and to improve its overall effectiveness. During 1979 and early 1980, I closely reviewed the SEA compliance monitoring activities of BEH, both past and current. In the course of this review, I studied the overall compliance information collected by BEH during reviews of several State education agencies, probably tens of thousands of pages of documents, both offsite and onsite, and I reviewed carefully the content and subsequent compliance history of numerous letters of findings issued by BEH to various State education agencies.

During this process, I also reviewed BEH compliance monitoring procedures and interviewed BEH staff members. In conducting this review, I attempted to assess the accuracy of the various criticisms of BEH compliance monitoring programs presented in the report of the Education Advocates Coalition.

Based on this in-depth review, I identified four important problems which I believe significantly reduce the effectiveness of BEH compliance monitoring efforts. These 1980 problems that were identified, at least by me, were: One, a lack of understanding as to what monitoring is or should be and a consistent confusion between the administrative responsibilities imposed on State education agencies by Federal requirements that could be monitored directly and the underlying local program of compliance requirements which proper execution of SEA administrative responsibilities are designed to ensure. That was the first area.

The second was an inappropriate overlapping of State plan approval issues and compliance monitoring findings, as evidenced by the failure of BEH to require State education agencies to develop and include in the State plan policies and procedures which translate general Federal regulatory requirements into measurable operational standards that could be used at the local level.

The third area was a rigid adherence to a triannual onsite monitoring schedule for each State education agency, regardless of its current compliance-related data or its compliance history, a lack of adequate advance preparation for SEA compliance monitoring visits, including the identification and analysis of all available information, and the routine conduct of short, unfocused visits to a small number of local education agencies in each State which, in my judgment, provided no reliable compliance information.

Finally, the unstructured and unfocused collection of information which often resulted in the inability of OSEP to legally support findings presented to State education agencies and the lack of any effective followup where voluntary implementation plans were agreed to by BEH and SEA.

Mr. Chairman, during the balance of my testimony, I would like to provide the subcommittee with, one, a brief explanation of each problem identified; and two, an assessment of how and to what extent each problem exists currently within OSEP.

Before doing so, I would like to briefly explain the basis for my familiarity with current OSEP and SEA compliance activities.

Since leaving the Department of Health, Education, and Welfare in 1977, in addition to my involvement during the 1979-80 review of BEH compliance monitoring, which I have described, I have worked directly with over 40 State education agencies and with scores of local education agencies in a wide variety of legal policy issues related to the implementation of Public Law 94-142.

In this regard, over the past 7 years, I have drafted State special education laws, regulations, policy statements and interagency agreements. I have served since 1977 as counsel to the House Wednesday Group of the House of Representatives and in 1983 and 1984, I served as cochair of the Commission on the Financing of a Free Appropriate Public Education for Special Needs Children asked by this subcommittee to study a range of financing and administrative issues crucial to the effective implementation of Public Law 94-142. I have participated actively in the preparation of its report.

During this same 7-year period, I have represented parent disability organizations, including several members of the consortium, in a wide range of courses designed to protect the rights of handicapped children guaranteed under the act under section 504.

Finally, I serve as a project officer on part B grants awarded by the Department of Education to the Fund for Equal Access to Society, a nonprofit organization with which I am connected, and the National Association of State Directors of Special Education, to train State Education Agency special education compliance monitoring, complaint investigation and policymaking staff.

The first area, the concept of monitoring and Federal/State administration under part B—and I want to go through this mainly because I think the word "monitoring" is used in many different ways for many different things and some of the confusion about what monitoring is and who does it is based on, I think, a lack of clear view of exactly what we are talking about. So I would like to take a couple minutes to talk about what monitoring is, as I understand the statute and regulations.

Mr. MURPHY. Could you rather summarize those explanations and those points, Mr. Gerry, we may be called to a rollcall and we would like to have your testimony completed before that.

Mr. GERRY. Well, let me say this: I think, Mr. Chairman, first—and I will try to summarize this as quickly as I can—since this is the heart of my testimony about the problems with——

Mr. **Murphy**. Well, we don't want to spoil the heart of your testimony.

Mr. **Gerry**. I will try to summarize it without losing the point.

First, I think that I identified two different theories of monitoring which have been interchangeably used in conversations and which I think are profoundly different. One view is that monitoring is a management process by which an agency collects information regularly, not periodically, analyzes the information in an effort to try to identify potential problems of compliance. That is an ongoing process and it involves both work offsite or onsite and, to me, monitoring is a permanent ongoing responsibility under this statute of the Department of Education and the Office of Special Education Programs.

Now, the other theory of monitoring is what I call in my testimony the "travel event theory." It seems to be how many places you visit is what—in other words, people refer to monitoring as though it is an event that can be described. I went out yesterday and I monitored the State Education Agency.

That concept of monitoring kind of runs through a lot of the discussion because we then talk about how many states have been monitored, for example. It is very important to discuss which definition of monitoring we are talking about. Are we talking about how many teams went to visit specific places and specific States or are we really talking about whether there is a system to collect and analyze information which will include visiting states. It may include visiting local education agencies.

The first thing I think is important is for us to talk about monitoring in a broader context because it is clear to me that in the General Education Provisions Act, which is actually the place where the monitoring responsibility connected to Public Law 94-142 is currently defined, I believe it is clear that what congress had in mind was the broader view of monitoring as a management process.

If we start with that, then I think the next important question is, who is responsible for monitoring the behavior of which agencies? In other words, if we talk about this management of information, we are looking to identify problems. The question is, who is supposed to be doing this? In the way I read the statute, it is quite clear that both the Federal Government and the States are supposed to be actively involved in monitoring.

In fact, most of the provisions of the General Education Provisions Act address State monitoring. So if that is true, then the question is, who are they supposed to be focusing on?

Now, in my reading of the statute and regulations, the Federal Government, as Congress designed this statute, was to be primarily focused on monitoring States and States, in turn, were to be primarily focused on monitoring local education agencies.

Now, if that is true, the question is, what is the content of that monitoring, what should be? Now, this gets us to this question of 21 areas versus 11 areas, whether there is a reduction or increase in monitoring. I think there is confusion here.

For the most part, State education agencies don't operate directly local education programs, so that when you talk about monitoring placement of children in least-restrictive environments or you talk about monitoring the evaluation of children who are learning-disabled, you are talking about an activity that occurs almost always at the local level, not at the State level.

When you talk about what States do under the act, I think there are 11 general administrative responsibilities identified in Public Law 94-142 and in the General Education Provisions Act. Five of those are, I think, from an advocacy standpoint, really crucial to the protection of the rights of handicapped children and those five are: the review of local applications; the investigation of complaints by parents; the monitoring of program operations at the local level; the conduct and review of due process hearings—I think those are the five. I may have left one out, but I will—that is a process which I think the Congress created and taken together, it represents the State's efforts to protect rights at the local level.

So when, for example—as did occur—there was a change in the focus of Federal monitoring for 21 areas to 11 areas, what there really was was a defining of the proper role of Federal monitoring. The 21 areas, by the way, don't exist in the statute or regulations as such; they were—they happen to be 21 areas that were listed in the document compiled by the Office of Special Education Programs. When the office went through its analysis of its proper role, it moved to a definition of 11 areas, not to reduce anything, but just to figure out the difference between what happened at the State level and what would happen at the local level.

Now, the 10 areas that aren't on the list of 11, such as placement in the least-restrictive education environment—an issue I am very interested in—is monitored currently under this system, but not directly. It is monitored indirectly. For example, if it occurs at the local level, then the States should be monitoring and one of the things that OSEP compliance monitoring staff do is to look at the monitoring procedures that are used by the State for a least-restrictive environment, so they would look at the questions that are asked, the data that is collected, how the State analyzes that data, and what kind of findings the State presents the local school systems.

The same thing would happen with due process hearings. They would look to see what due process hearings were conducted on least-restrictive environments, what the outcomes of those due process hearing were, what the decisions were, and so on, with State/local applications, the content, hearing decisions and complaints.

So that it is not that those 10 substantive areas have dropped out of the monitoring system, rather, they have been properly incorporated in it as focused-issue reviews of the States. So how are the States doing in each of those 10 areas because the law primarily puts on a State the responsibility for setting policy—that is the fifth area of general supervision—and enforcing.

So I don't agree with the proposition that the scope of monitoring has decreased at all. I think that the—what has happened is that there has been a needed clarification and distinction between State monitoring and local.

The second major area that we talked about—I will skip over generally—is the State plan review and compliance monitoring activities. I think there were a lot of problems with the issues that were raised to approve State plans versus the issues that were raised to monitor districts. The State plan review system is basically a contractual system in which the States are required to enter into certain assurances, provide certain policies and laws and demonstrate that they have the structure to implement the act.

In concept, it was not designed as a mechanism for dealing with specific compliance issues. In any event, I think most of the confusion in that area has been eliminated and the remaining needs probably are to, as I testified earlier, to try to get the State education agencies to do their policymaking job. The biggest single problem right now, I think, in terms of structuring this whole process is that few States have detailed measurable standards. I mean State standards, not Federal standards, but State standards, which tell a local school system what this general Federal requirement means, or at least what options the local school system has legally to run their programs.

I think that is the major issue remaining. It is important to making the system work.

That gets us to this whole issue that was raised in the third of my points, which is the planning and structuring of monitoring activities, and again I think we have gotten into an area of confusion. The triannual review, which has been discussed quite a bit, strikes me as something which we need to really look at closely.

In talking with Dr. Martin, I think I can identify its origin in what I describe in my testimony as a kind of show the flag concept, which I am not sure is a bad idea. In fact, I think it was probably a good idea the first few years after the passage of the act.

The idea was, literally, the travel event, that Federal officials would travel to each State, would appear in the State capital, would meet with State education officials and parents and advocacy groups and go to the local level in an effort to really convince—and we know that some States were more reluctant than others—States that there really was a serious compliance obligation that this law had passed and that the Federal Government intended that it be implemented.

I think that that kind of show the flag strategy makes some sense in retrospect, but it has been a long time since we passed the law and I think we can say with some assurance at this point that there really are few, if any, local education agencies or States—no States, certainly—that don't know that the law has been passed or what their general responsibilities are or who need that type of strategy any more.

The question is, at this point, does it make any sense to critique the Office of Special Education Programs for moving away from a triannual review? It seems to me the answer is exactly the opposite; no, it doesn't make any sense. The Children's Defense Fund—one of the their major findings was the lack of targeting by the Federal Government on specific compliance problems. In testifying before Congress over, I guess, a total of about a 10-year period, when I was in the Federal Government, one of the questions that was consistently asked of the Office for Civil Rights and other Federal agencies is what are you doing to really find out where the problems are, as opposed to just going out and routinely spending travel money?

That, in fact, became part of the order in *Adams* versus—I have to go back, I think it was—then we went through all the Secretaries and it is now Bell. In the *Adams* case, what the U.S. District Court for the District of Columbia did was precisely reject the routine periodic review theory and say to the Office for Civil Rights: "You have to go out and collect information about what is going on out there in the States and then you have to target your monitoring effort based on likely indicators of problems."

That is the structure in the *Adams* case and that is where OSEP has moved to.

To condense a couple of pages of my testimony, I see nothing wrong with that.

The second point is this question of visiting local school districts and that is one that I have very strong feelings about, having run a compliance program for a few years that visits a lot of local schools. First, I reviewed the results of a lot of these visits in about 10 States and I can tell you that other than identifying what I would describe as global issues that came up in the first couple years of the act—for example, no handicapped children would have IEP's or there would be no child find system. Something that would literally—could be identified in the 10-minute conversation and that you wouldn't need much legal support for once you validated it.

There is very little documentary evidence of compliance or noncompliance collected during most of these visits and if you think about it, you could see why because—say I went into a State the size of Pennsylvania, Ohio, or New York, and I had to do a sample of local school systems. If I am a lawyer and I am investigating compliance with the law, what kind of a sample would I have to take of the number of handicapped children in the State or the number of districts in order to really have reliable findings about compliance at the local level on a statewide basis? Say that I said 10 percent. So I had to take—well, I once read a large review of the New York City School System and if I just thought about 10 percent of the handicapped children in the New York City School System and the number of staff it would take to investigate any major issue of compliance in any competent way at the local level, for 10 percent of the children in the New York City School System in 10 percent of the schools, I certainly couldn't drop by for a visit for a couple of days with a team of two or three people and come away from that visit with anything that could be described as reliable compliance information.

While the New York City School System is the largest school system in the country, I think I could say the same about two or three people in a day or two in almost any school system. The question is, what is the utility of doing that? At this point in the implementation of the law, would we really identify the kind of complex difficulty in challenging compliance problems which we know exist, but are we going to document anything with that procedure? I think the answer is clearly no.

What OSEP has done, as I understand it, is to say, "Look, we are going to take this issue-specific focus at the State level; we are going to go into a State-level State Education Agency; we are going to see how they are handling an issue like placement in least-restrictive environment or evaluation." As we review their documents, if we see some problems, then we are going to go to specific LEA's that we identify and we are going to really look at that problem. OSEP did that, for example, in Ohio, with the placement of children in separate schools for mentally retarded children, where they went into Ohio and they went into four school systems and they did a very thorough review of that problem.

Well, when they finished that review, they had something to go to the State of Ohio with because they had spent—as it turns out—probably the time of between 5 and 10 people for—I would estimate—at least 2 to 3 weeks collecting data just on-site to deal with that one issue, which was the assignment of trainable mentally retarded students to separate schools. They had, I believe, legally supportable findings.

But the idea that somehow they could just append, or ought to append to their routine State visits unfocused reviews of LEA's strikes me as really a waste of their resources. It is also something that may tend to confuse States as to what they are supposed to be doing, because if we asked the States to target compliance problems, I think we ought to spend most of our resources seeing if they do a good job, not routinely visiting school systems to try to kind of replicate in a very shorthand fashion what they are trying to do.

Finally, since I have, I think, defended or at least supported several of the changes that have gone on, which I don't think are regressive or show any lack of support for the law or its enforcement—in fact, I think that there are successful efforts to improve the administration of the system, I do think there are two or three areas where we need—continue to need improvement and help.

The first is the actual collection of information onsite. While there has been some progress, there seems to me to be considerably more needed in terms of training staff to collect evidence that can be used in an enforcement proceeding if necessary, which includes the advance preparation of data-collection instruments, proper interviewing techniques, some of the basic issues of onsite activities. I think that is primarily a training activity, but it is a badly needed one.

Perhaps most importantly, and here I agree completely with Mr. Weintraub's testimony, I think, the lack of followup, I think, is a very serious one. It is important for the Department to deal with this—that when compliance plans are agreed to, where a State and the Federal Government agree on a particular strategy to overcome an identified problem, my understanding is right now that there is very little staff time, if any, committed to really checking up to see whether that occurs or not. In other words, whether those various actions that are supposed to take place do take place.

There are really two issues: One, are the agreed-upon actions carried out; and second, do they do any good? In other words, when you are monitoring a plan, you always want to look at each of those issues. Right now, I think that there continues to be a problem with that which needs to be rectified.

In general, let me say that I think, Mr. Chairman, that there has been significant progress by the Office of Special Education Programs in the last 3 or 4 years. I think that has been strengthened during the last year by Mrs. Will's administration.

I know that there are activities under way within the office, which I am sure you will hear more about, to make further improvements. I think that the OSEP Program is, in my judgment, currently moving ahead aggressively and successfully.

I thank you very much for the opportunity to testify.

[Prepared statement of Martin H. Gerry follows:]

PREPARED STATEMENT OF MARTIN H. GERRY, ATTORNEY, PICKARD & GERRY

Mr. Chairman and members of the Subcommittee, first let me express my appreciation for your invitation to testify this morning on the subject of monitoring by the U.S. Department of Education to determine the compliance of state education aencies with Part B of the Education of the Handicapped Act (as amended), its implementing Regulation (34 C.F.R. 300), and provisions relating to program administration included in the Education Department General Administrative Regulation (34 CFR 76). I understand that the Subcommittee is also reviewing the coordination within the Department of compliance activities under Part B and under Section 504 of the Rehabilitation Act of 1973.

I would like to outline my experience with Federal and State monitoring activities under the Act before commenting on the present performance of the Department of Education in this important area. During the period 1969–1977 I served in a variety of positions within the Office of Secretary of the Department of Health, Education and Welfare. From 1973–1974 I served as Deputy Director of the Office for Civil Rights (OCR) and in 1975 I was appointed Director of that Office by President Ford. While serving as Deputy Director and Director of OCR, I was assigned principal responsibility by the Secretary of HEW for the development of regulations to implement Section 504 of the Rehabilitation Act of 1973. In fact, virtually all of the regulatory development activities under that statute had been completed at the time of my resignation from the Department in February of 1977. During the same period I was also charged by the Secretary of Health, Education and Welfare with oversight responsibility for the development of the regulations being developed by the Bureau for the Education of the Handicapped to implemented P.L. 94–142.

As regulations for Section 504 and P.L. 94–142 were being developed concurrently by the Office for Civil Rights and the Bureau for the Education of the Handicapped (BEH), respectively, Dr. Edwin Martin (who was then the Associate Commissioner of Education in charge of BEH) and I discussed at length the question of the effective coordinated implementation of the two statutes in so far as they both applied to the operation of elementary and secondary education programs. In order to best use the existing resources of our two agencies and in order to take advantage of the different enforcement procedures incorporated in the two statutes, Dr. Martin and I developed an intra-agency agreement on the joint implementation of both statutes.

Under the terms of this agreement, which was signed in 1976, OCR agreed to take responsibility for the investigation of complaints and the conduct of compliance reviews with respect to the adherence of both local education agencies (LEAs) and state operated programs with the requirements of the two statutes. In furtherance of this agreement, BEH was to provide technical staff support of regionally-based OCR investigative teams during all phases of their activities: initial investigation; formulation of findings; negotiation for voluntary compliance; and, if necessary, enforcement. A final element of our joint plan in this area was that where voluntary compliance efforts were unsuccessful the two agencies would use the enforcement options available under Section 504 (i.e., an administrative hearing procedure leading to targeted LEA fund cut-off or suit by the Department of Justice seeking injunctive relief) rather than the indirect SEA oriented remedies available under P.L. 94–142.

A second major section of the joint agreement between OCR and BEH addressed the compliance of State education agencies (SEAs) with the provisions of both statutes. These agencies, of course, have direct statewide compliance responsibilities under P.L. 94–142 and indirect responsibility for statewide compliance under Section 504 derived from the "pass through" of Federal funds to both LEAs and other State agencies operating education programs. In this area, it was agreed that BEH was to assume responsibility for the investigation of complaints and the conduct of compliance reviews with respect to the adherence of SEAs with the requirements of both statutes. OCR was to provide technical staff support to BEH in those Section

504 compliance areas not co-extensive with P.L. 94-142 (e.g., program accessibility; non-discrimination in employment) and in the formulation of joint findings and subsequent negotiation for voluntary compliance. Enforcement options under both statutes were to be available to BEH which would select the enforcement strategy most appropriate in light of the particular violations that were identified.

By its terms, the 1976 Agreement was to become effective with the publication of final regulations under each of the two statutes. After leaving the Department in 1977, I was informed by Dr. Martin that the agreement had been unilaterally cancelled by the Office for Civil Rights chiefly because of its political history. In October of 1980 OCR and BEH (now in the Department of Education) entered into a formal Memorandum of Understanding (MOU) which lacked the direct delegations of authority contained in the 1976 Agreement but which called for greatly improved coordination between the two agencies. On the basis of my familiarity with both the past and current implementation by the Office of Special Education Programs (OSEP) and OCR of the October 1980 MOU, I am convinced that OCR has, unwisely and unilaterally, withdrawn from or defaulted on important obligations contained in the agreement. I continue to believe that effective coordination between these agencies can and would dramatically improve the compliance monitoring capabilities of both.

My direct involvement with the compliance monitoring activities of the Bureau for the Education of the Handicapped began in 1979. During that year the Children's Defense Fund and other advocacy organizations (together called the Education Advocates Coalition) issued a major report critical of the operations of the Bureau in five major areas related to monitoring and enforcement of P.L. 94-142 requirements: monitoring procedures; lack of enforcement; failure to issue policies; targeting of resources; and assignment and training of staff. At Dr. Martin's request and working closely with staff of the Division of Assistance to States, I agreed to assist BEH in a self-evaluation of its current monitoring activites and in the development of a plan to overcome any identified problems and improve its overall effectiveness.

During 1979 and early 1980 I closely reviewed the SEA compliance monitoring activites of BEH, both past and current. In the course of this review I studied the overall compliance information collected by BEH during the review of several SEAs, both off-site and on-site, and I reviewed carefully the content and subsequent compliance history of numerous letters of finding issued by BEH to various SEAs. During this process I also reviewed BEH compliance monitoring procedures and interviewed numerous BEH monitoring staff members. In conducting this review I also attempted to assess the accuracy of the various criticisms of the BEH compliance monitoring program presented in the report of the Education Advocates Coalition. Based on this in-depth review, I identified four important problems which I believed significantly reduced the effectiveness of BEH compliance monitoring efforts. These problems included:

(1) A lack of understanding as to what "monitoring" is or should be and a consistent confusion between the administrative responsibilities imposed on SEAs by Federal requirements that can be monitored directly and the underlying local program compliance requirements which proper execution of SEA administrative responsibilities are designed to ensure;

(2) An inappropriate overlapping of State Plan approval issues and compliance monitoring findings, as evidenced by the failure of BEH to require SEAs to develop and include in the State Plan policies and procedures which translate general Federal regulatory requirements into measurable operational standards;

(3) A rigid adherence to a triannual on-site monitoring schedule for each SEA (regardless of current compliance-related data or state compliance history), a lack of adequate advance preparation for SEA compliance monitoring visits (including the identification and analysis of all available information) and the routine conduct of short, unfocused visits to a small number of LEAs in each SEA which provided no reliable compliance information; and

(4) The unstructured and unfocused collection of information often resulting in the inability of OSEP to legally support findings presented to SEAs and the lack of any effective follow-up where voluntary implementation plans were agreed to by BEH and an SEA.

Mr. Chairman, during the balance of my testimony I would like to provide the Subcommittee with: (1) a brief explanation of each problem identified; and (2) an assessment of how and to what extent each problem exists within OSEP. Before doing so, I would like to briefly explain the basis for my familiarity with current OSEP and SEA compliance activities.

Since leaving the Department of Health, Education and Welfare in 1977, in addition to my involvement during 1979–80 in the review of BEH compliance monitoring described above, I have worked directly with over 40 SEAs and with scores of local education agencies in a wide variety of legal and policy issues relating to the implementation of P.L. 94–142. In this regard, over the past seven years I have drafted state special education laws, regulations, policy statements and interagency agreements. In 1983–84 I served as a Co-Chair of the Commission on the Financing of a Free Appropriate Public Education for Special Needs Children asked by this Subcommittee to study a range of financing and administrative issues crucial to the effective implementation of P.L. 94–142 and participated actively in the preparation of its report. During the same seven year period I have represented parent and disability organizations in a wide range of cases designed to protect the rights of handicapped children guaranteed under the Act and under Section 504. Finally, I currently serve as Project Officer on Part D grants awarded by the Department of Education to the Fund for Equal Access to Society and the National Association of State Directors of Special Education (NASDSE) to train SEA special education compliance monitoring, complaint investigation and policy making staff.

THE CONCEPT OF MONITORING AND FEDERAL/STATE ADMINISTRATION UNDER PART B

Much of the confusion regarding the proper nature and extent of Federal monitoring of SEA and LEA compliance with P.L. 94–142 and related regulatory provisions stems, I believe, from a basic misunderstanding of the concept of monitoring, itself. In my view, "monitoring" is an ongoing management process through which (1) information is regularly collected and analyzed to determine whether the behavior of all those agencies subject to monitoring scrutiny meets standards established by or adopted by the monitoring agency, and (2) all agencies not conforming to established standards are required to do so. Thus, monitoring becomes a continuous management process by which all agencies are regularly reviewed and required to conform to established standards.

Applied to P.L. 94–142, this definition would envision a monitoring role in which information concerning the behavior of state and local education agencies would be collected and analyzed to determine compliance with applicable Federal requirements. Where deficiencies were found, non-complying agencies would be required to promptly comply with established standards.

This view of monitoring differs sharply from what I would call the "travel event theory" which is often used as the frame of reference for discussions of monitoring. The "travel event theory" defines monitoring in terms of visits or appearances in particular places at particular times. Under this theory an agency can be said to have been "monitored" when it has been visited by a team of individuals charged with reviewing its compliance status. In sum, this theory of monitoring confuses one important aspect of an overall monitoring process, an on-site data collection visit, with the process, itself. This confusion often generates questions which are targeted exclusively to on-site visitation, such as "How long has it been since they have been monitored?"

Once a clear definition of monitoring is established, the next important question is: "Who is primarily responsible for monitoring the behavior of which agencies?" While there has been an assumption by some that the Federal Government is principally responsible for monitoring the behavior of all education agencies with regard to the requirements of P.L. 94–142, current Federal statutes and regulations pertinent to the administration of P.L. 94–142 clearly differentiate the principal monitoring responsibilities assigned to Federal (OSEP) and state education agencies. Pursuant to P.L. 94–142, the General Education Provisions Act, and their implementing regulations, SEAs are charged with principal responsibility for monitoring the compliance of local education agencies and state operated programs (i.e., subgrantees) with the substantive provisions of the Act. In contrast, the Department of Education is assigned principal responsibility for the monitoring of the compliance of SEAs with the administrative requirements imposed under both Federal Statutes. There is no question that the Department of Education has authority under P.L. 94–142 to review the compliance of LEAs but the basic design of the statute requires that this authority be used in the context of ensuring effective State administration.

Under the provisions of P.L. 94–142 and the General Education Provisions Act (as defined in the Education Department General Administrative Regulation), SEAs are required to carry out eleven (11) basic administrative responsibilities linked to the operation of the Part B program. Five of these responsibilities involve the SEA in direct review and regulation of program compliance at the local level. These five

SEA responsibilities, if fully met, should ensure full LEA compliance with the substantive requirements of P.L. 94-142:

(1) SEA monitoring of LEAs and state operated programs (34 C.F.R. 76.101(e) (i) and (v); 300.575);

(2) SEA review of local applications (34 C.F.R. 76.400–401);

(3) SEA investigation and resolution of complaints (34 C.F.R. 76.780–783);

(4) SEA conduct or review of Due Process Hearings (34 C.F.R. 300.506);

(5) SEA general supervision over education programs including the issuance of binding SEA standards (34 C.F.R. 300.600).

Each of these SEA administrative areas requires constant overall examination of each of the principal substantive requirements of P.L. 94-142. Three of the responsibilities are "proactive" (monitoring; review of applications; and general supervision) and, thus, require careful comprehensive planning. The two remaining responsibilities are "reactive" (investigation of complaints; review of due process hearings) and permit parents and other interested parties to force State scrutiny of a particular fact situation.

During the last three years OSEP has clearly moved toward the adoption of a more expansive definition of monitoring (as described above) and now conducts focused monitoring in a flexible array of strategies including off-site data collection and off-site/on-site data collection. Rejecting the "travel event" theory of monitoring, OSEP has taken significant steps to expand and strengthen its overall concept of monitoring.

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During the same three year period OSEP has also for the first time effectively communicated at both the Federal and state level the differentiated responsibilities and primary objectives of Federal and state administrative and compliance monitoring activities. During this period weaknesses in the five crucial areas of SEA responsibility have been identified by OSEP monitoring teams. Most program administrative review letters issued by OSEP during the last two years have strongly critiqued SEA performance in one or more of these areas and have demanded immediate corrective action. As a result, and for the first time in many states, SEAs have either initiated serious LEA monitoring efforts or dramatically strengthened existing systems. Recognizing the important distinction between the eleven SEA administrative requirements which form the structure for the current OSEP monitoring system and the ten substantive LEA program operations areas previously engrafted on SEA monitoring reviews, OSEP has designed an effective, issue-focused state compliance review procedure. This procedure probes important (substantive) LEA program areas, such as placement in the least restrictive environment, by focusing its review of crucial SEA administrative activities. For example, a current OSEP compliance monitoring team might well review SEA local application review procedures from the standpoint of their adequacy in identifying LEA problems with the least restrictive environment placement mandate. Similarly, SEA monitoring standards and procedures relating to the same issue are often intensively reviewed. The overall result of this reorganized monitoring approach is dramatically improved monitoring of both SEA administrative responsibilities and their real impact on LEA compliance in the crucial areas of program operations.

In sum, the goal of the current OSEP SEA compliance monitoring approach appears to be one of effectively enlisting the active involvement of several hundred SEA special education administrative and monitoring staff in effectively ensuring that LEAs and other education programs are meeting their compliance obligations under the Act. This compliance monitoring strategy is both closer to that statutory administrative model and much more likely to produce practical compliance gains than its predecessors.

CONFUSION OF STATE PLAN REVIEW AND COMPLIANCE MONITORING ACTIVITIES

One of the pervasive problems identified during my 1979–80 Review of BEH compliance monitoring was confusion of the focus and function of agency responsibility for state plan approval, on the one hand, and SEA compliance monitoring on the other. Prior to 1980 there was little, if any, distinction in the minds of many BEH staff members between the function and objectives of the two processes. As a result of this confusion, issues that might well have formed the nucleus of a legally supportable compliance monitoring finding were injected into state plan approval discussions (without supporting investigation) while issues that ought to have been raised during such discussions were ignored. Chief among this latter group were issues dealing with the major general supervision responsibility imposed upon SEAs by P.L. 94-142, and its implementing regulation, to develop detailed implementation policies and procedures in eighteen clearly identified areas.

The statutory and regulatory distinction between the two activities are substantial. The principal objective of the state plan review procedure is to ensure that each SEA has adopted and has in place an effective structure for ensuring that every handicapped child of school age is provided a free appropriate public education in the least restrictive environment. This structural emphasis focuses review activity on the review of state laws, regulations and eighteen identified SEA policies and procedures and related SEA guarantees. In contrast, compliance monitoring activities are focused on the actual performance of SEAs in carrying out a range of important administrative responsibilities, many of which focus on the actual performance of LEAs in providing mandated services.

In fact, state plans contained and, still for the most part contain, few of the policies. For the most part, SEA policies and procedures which are included in the plans represent either a direct quotation or simple paraphrase of the underlying Federal regulatory provision. As a result the crucial policy needs at the local level—the translation of broad Federal regulatory principles into measureable operational standards—is rarely met. Two unfortunate consequences of this failure to compel SEAs to develop standards have been the dramatically increased prospects for litigation at the local level and the inability of SEAs to conduct effective monitoring.

Efforts to inject BEH compliance monitoring activities into state plan review activities produced equally unfortunate consequences. State plan approval was often held up for negotiations which had nothing to do with the actual content of the plans, themselves. Instead of advancing the prospects of compliance, this procedure created enormous bad feeling but resulted in relatively limited compliance gain as SEAs knew from the outset that BEH "findings" relating to program operation, absent an actual compliance monitoring focus, were in the final analysis legally unsupportable.

The period from 1980 to the present has again seen major internal improvement in OSEP activities. The FY 84-86 state plan review procedure has demonstrated a much clearer and consistent understanding of the focus and function of the state plan review procedure. As a result, OSEP has properly focused its efforts on numerous policy changes and improvements by SEAs with great success. As I indicated earlier, during the same period of time, the clarity and effectiveness of OSEP monitoring in focusing on the actual performance of SEAs in carrying out their day-to-day responsiblities improved dramatically, as well.

PLANNING AND STRUCTURING OSEP MONITORING ACTIVITIES

During the first years that followed the issuance of the implementing Regulation under P.L. 94-142, BEH established an SEA monitoring procedure which strongly reflected the "travel event" theory I described earlier in my testimony. This early procedure called for the on-site visitation by BEH monitoring staff to each SEA within a specific timeframe (i.e., at least once every two or three years) and included a few routine, unfocused on-site visits to LEAs and to other education programs in the state of being "monitored". Little advance preparation was done before each SEA monitoring visit in terms of careful review of data and past compliance information already on hand at BEH. Structured data collection instruments, such as interview guides or file extraction formats, were not prepared. A general, yes/no checklist of regulatory requirements was used during visits to SEAs and LEAs, alike.

The rationale for what has become known as the "triannual on-site review" is not found in either Federal statute or regulation. Rather, its origin appears to be the probably sensible view that given the range of enthusiasm among state and local educational agencies, across the country for full implementation of P.L. 94-142 requirements, a Federal on-site presence, soon after passage of the Act, might help underscore the political and practical reality of change. Without arguing the usefulness of this "show the flag" strategy in the late 1970s, its contemporary relevance seems nil. In fact, the failure of BEH to collect and analyze information to target SEAs for compliance monitoring (i.e., the agency's exclusive reliance on periodic review) was a major point of criticism by the Education Advocates Coalition in their 1979 report.

The concept of untargeted periodic reviews also is quite inconsistent with the standards for civil rights compliance reviews in a series of consent orders issued by the United States District Court in *Adams* v. *Bell*, and its predecessors. In 1976 I negotiated a Consent Agreement with representatives of the NAACP Legal Defense Fund, Inc. and other major civil and women's rights organizations which called for the collection and analysis of information by OCR to target its compliance reviews under Section 504 and other civil rights laws on those state and local education agencies which appeared to have the greatest likelihood of compliance problems. This same approach is reflected in Part II of the District Court's most recent Consent Order (March 11, 1983) in the case.

During the last three years OSEP has initiated and is continuing to improve its collection of general compliance from both State and local education agencies. This information, in concert with SEA compliance history and complaints, has been used to "target" specific SEAs for in-depth compliance monitoring activity. A second major consequence of this effort has been the design and partial implementation of a continuous screening process for identifying and tracking the correction of identified SEA compliance problems.

A second major element of the early BEH monitoring system was inclusion in state visits of short, relatively unstructured visits to LEAs and other state operated education programs. These visits were an important part of the "show the flag" strategy and also allowed Federal officials to gauge the degree to which the basic concepts and guarantees of P.L. 94–142 had been communicated by the SEA to the local level. The visits often revealed first generation compliance problems on which the SEAs were to follow-up (e.g., no IEPs for identified handicapped children) but rarely provided reliable compliance information on more than these global issues. Again, whatever the usefulness of the visits may have been, as time passed their utility declined sharply and the fact of the visits contributed greatly to SEA confusion about the proper role of SEA monitoring and administration. The notion that the conduct of these on-site inspection visits did or could produce reliable evidence of statewide non-compliance on local program operations is absurd. It would take scores of OSEP staff several months to review the overall program compliance of a respectable sample of LEAs in a single state.

During the last three years OSEP has concentrated its efforts on SEA administrative requirements and on tracing the effects of those administrative actions on important second generation compliance problems at the local level. Because of the SEA administration and supervision of many State operated programs, OSEP has continued to make in-depth visits to these programs when conducting on-site visits to SEAs. In contrast, on-site visits to LEAs have been made only as warranted by the results of initial review of SEA administrative operations. When LEA visits are scheduled, the information to be collected at the LEA level can be focussed and reliable.

Finally, during the last three years OSEP has also made major gains in the advance planning of its compliance monitoring activities. Off-site data collection and analysis efforts have been dramatically expanded and comprehensive state profiles have been prepared in connection with all scheduled compliance monitoring activities. These profiles have provided an extremely important frame of reference for both OSEP monitoring teams and SEA special education administrators.

OSEP INVESTIGATIVE AND FOLLOW-UP PROCEDURES

My review of specific BEH compliance monitoring files and related documents revealed pervasive problems both in the planning and collection of compliance information and in the lack of follow-up to negotiated corrective action plans accepted by BEH. Because in part of the lack of internal, interpretive standards related to both SEA administrative responsibilities and LEA substantive compliance responsibilities, BEH SEA compliance reviews were structured mainly around a "checklist" of regulatory provisions. As a result of this approach information collected by BEH onsite monitoring teams was often both extraneous and unusable in terms of evidentiary value. In my judgment, data collection should be focussed on collecting those piece of information needed to test an investigative or compliance hypothesis (e.g., SEA X is (is not) investigating every complaint it receives?). These investigative hypotheses must, in turn, derive from specific statutory or regulatory provisions. In this way a clear linkage between legal requirement and data collection can be made and an "investigative data base" for any compliance monitoring activity can be generated. Once a data base exists, data collection can be planned and structured data collection instruments can be developed with due attention to legal evidentiary requirements. Based on this system, legally supportable findings can then be made and enforced. On the basis of my 1979-80 review of BEH compliance monitoring activities, I concluded that none of these basic building blocks was yet fully in place.

During the last three or four years OSEP has make measurable gains in establishing the type of investigative system I have just described. Internal interpretive standards have been developed in several areas and overall data collection planning (particularly off-site) has improved. While the advance preparation of structured data collection instruments has improved in certain areas, the problem of organized data collection and analysis has not been fully addressed.

My review of BEH compliance monitoring procedures also revealed a serious problem with respect to the lack of follow-up by OSEP of SEA implementation of corrective action (or "voluntary implementation") plans. While the development of the new continuous screening procedures I described above will make an important contribution to this area, the problem of inadequate follow-up by OSEP of plan implementation remains a serious one.

Mr. Chairman, I again wish to express my appreciation for the opportunity to testify this morning. I believe the questions which the Sub-committee is addressing in this hearing are of vital importance to millions of handicapped Americans. I believed the Office of Special Education Programs has made important progress in the last three years to improve the quality and effectiveness of its compliance monitoring program. While serious problems remain to be solved, the OSEP program is, in my judgment, currently moving ahead aggressively and successfully.

I would be happy to answer any questions that you or other members of the Subcommittee may wish to ask.

Thank you.

Mr. Murphy. Thank you very much, Mr. Gerry.

I have one or two questions and then I will turn it over to the other members of the panel. I welcome Mr. Paul Simon, Mr. Pat Williams and John McCain, who have also joined us here at the hearing.

Mr. Weintraub, do you feel that the reductions in staff within the Office of Special Education Programs have been hindering the Office's ability to monitor the programs? You mentioned that you felt they have not monitored local school districts and do you believe that it is reduction in staff that has caused this?

Mr. Weintraub. Well, as I had indicated in my statement, Mr. Chairman——

Mr. Murphy. Or a reduction in commitment?

Mr. Weintraub [continuing]. There has been a 75-percent reduction in the number of people available to do the job. Basically what you have got is you have got a very complex law; you have got 50 States plus the territories, et cetera, and you have 10 people in the Federal Government who supposedly are responsible for seeing that all of what has to take place takes place. I think that is a little bit overwhelming.

There used to be 40 of those people. I don't know whether 40 is the magic figure. It partially depends, Mr. Chairman, on what model you use. Mr. Gerry has suggested that there is a new model. Well, if the new model—certainly not enough to do the old model—I question whether it would be enough to do the new model as well.

Mr. Murphy. May I ask you, Mr. Gerry, do you think, then, it is not the obligation of the Office of Special Education to monitor any local school districts? Do you think they should not go into the LEA's at all?

Mr. Gerry. No, Mr. Chairman, I don't think that. I think that they should go into LEA's where they have identified reasons to go into LEA's. In other words, I don't think that they should routinely monitor LEA's and I don't think the act calls for that or anticipates it. I think that they should monitor State education agencies, look at the data that they have on hand from State education agencies and directly from LEA's——

Mr. MURPHY. From your experience, were you satisfied that all State agencies monitored the local agencies—if you don't monitor the local educational agencies, which is where the actual student is either being attended to or not being attended to, is actually getting the full education; is actually being mainstreamed. If you don't get down to that level, how are you going to monitor to see whether the act is accomplishing the purposes?

Mr. GERRY. Well, maybe I can give you a couple of examples. It seems to me that if you properly monitor the State education agencies' monitoring activities, because they have their own—that is, if you look at how they selected local State education agencies, what data they analyzed, how they asked questions and what information they collect, what they do with the information, how they analyze it, whether they send letters identifying problems to local school systems. If you go through that process and you review how they are doing their job, it seems to me then the big—and, of course, you have the benefit of—and I agree completely with Mr. Weintraub and I think it is important to meet with parents and advocates. It is important to listen to what people are telling you through complaints, both direct and indirect, and if you have no evidentiary data and you have no complaints and you have no indications of problems at the local level, then I don't think it is necessary to monitor at the local level.

The problem I have, Mr. Chairman, is if it were helpful, I don't think it could be done with enormous increases in resources competently because—if I were, for example, going to go and visit a local education agency—and this is what used to happen—for a half day or a day—and I have two people, and I were going to visit any school system of any size—this law, of course, is individual child-specific, so if I am going to look at what is happening, I am going to have to look at the records of individual children, really. I mean, I am going to have to see—I just don't think that the capacity, apart from the philosophy, that the capacity exists with 10 times the staff to really do that in a respectable statistically representative sample.

Mr. SIMON. Mr. Chairman——

Mr. GERRY. So I think both philosophically——

Mr. MURPHY. Do you believe that they are—that the office is properly staffed now to do the monitoring job or——

Mr. GERRY. I don't know what the number of people actually assigned to monitoring is, and of course, I don't administer the office. My estimate would be that if somewhere between 35 and 40 professional staff, the job, as I understand it, I think, could be done well. Now, that is—and remember, I am just testifying, of course, Mr. Chairman, for what my view of the way this should be done is.

But I would estimate that that would be a reasonable number of people to actually operate the kind of system that I am talking about.

Mr. SIMON. If the chairman would yield, because I really——

Mr. MURPHY. All right.

Mr. SIMON. I think you are getting down to one of the heart of how you proceed and my strong reaction is that if you don't have some hands-on feel of that local school district, you are going to deal in theory when you go in to visit that State agency. My belief is—and however many personnel we need to do this—we ought to have—when they come into the State of Illinois, they ought to come and visit two or three school districts, have a meeting with some parents in those school districts, not necessarily school districts where there are problems, but visit those school districts, take a look at some individual records, spend a day or two, then go to the State, and then you are going to have some feel of the world of reality.

My feeling is if you simply have people from Washington visiting people in Springfield, you are dealing in the world of theory and abstractions and we are not going to get the job done that needs to be done. I feel that very strongly. I have been—and I regret I can't stay for the full testimony—I have been reading through the various items of testimony and I notice that Assistant Secretary Will—and I hear she is doing an excellent job—but she says: "During a visit, team members may also visit State-operated and State-supported programs and a sampling of local education agencies." I think that ought to be a mandate. I think we ought to do it in every State you go into: Rhode Island, Texas, Illinois. I don't care where it is. There ought to be some hands-on—there ought to be a feel for what is really happening, the real world.

One of the problems of Federal Government is we have become much too remote from reality. Just an observation. Sorry to take all your time here, Mr. Chairman.

Mr. **Murphy**. No; that is all right. I was ready to call on Mr. Biaggi. He has apparently left the room temporarily so I will call on Mr Bartlett for any questions he may have of either of the witnesses.

Mr. **Bartlett**. It sounds as if the difference of opinion here, and I want to explore some of those differences, is to whether monitoring of State and LEA activities is an activity that is an onsite or a travel event or is more of a continuous review in monitoring.

Dr. Weintraub, I wonder if I could begin with you and ask you—if, in fact, you think that that is your definition—Mr. Gerry characterized, I think, your definition of monitoring as a travel event and there are a hundred—I mean, it makes some sense numerically that that—doesn't make any sense as an actual review.

Now, Congressman Simon's idea—and I would like to get Mr. Gerry's reaction to that of making sure that we have a hands-on, real-world sense of understanding what is happening—it seems to me that is different from trying to review 100,000 schools with—whether it is 10, or 40, or 400, or 4,000—it would probably cause more confusion than anything else.

Could you tell us if that is what you are advocating, that we beef up the number of travel events?

Mr. **Weintraub**. I think, first of all, Mr. Bartlett, we have to have a definable system. I can be rather impressed overall with the kind of system Mr. Gerry describes. I don't think necessarily the annual 3-year going out and visiting the State, filing the report, is necessarily a good way to monitor. The old notion we used to have in psychology, you know, 10 psychologists standing in a room observing the same thing doesn't necessarily produce anything better than one person doing it.

You know, this is not a system where the answers are solely definable in numbers of visits and those things. However, that is the system. The system in policy is a system now based, not necessarily on the theory Mr. Gerry describes, because if you look at how anyone perceives the system, it is a triannual system. Mrs. Will is going to come in and talk about triannual. It is a system based upon these visits and everything else.

Now, if that is the standard, if that is what States understand it to be, if that is what parents and consumers understand it to be, then the only way we can judge it is by the kind of criteria I am using to judge it, which is how many visits have you made; are you on schedule on the 3-year reviews; you are not on schedule on the 3-year reviews, et cetera, et cetera. If one wants to have a different system that is a much more generalized system than Mr. Gerry is describing, which conceptually, I don't necessarily have a problem with, then it ought to be established and made clear and ought to be published somewhere and everybody understand the rules of how it works, plus some criteria applied as to how it will be evaluated in terms of its effectiveness.

Mr. **Bartlett**. Dr. Weintraub, could I interrupt you there because I want to make sure I understand. Are you—then do you advocate that more along the lines of that system and get away from the travel event system, because it is my understanding that that is generally more of the system we have, but——

Mr. **Weintraub**. I think——

Mr. **Bartlett** [continuing]. Are you advocating one over the other?

Mr. **Weintraub**. I think probably—and Mr. Gerry and I have had—sat on opposite sides of issues long enough to know that probably in many ways we are probably somewhere both in the middle. I think that what is needed is probably a combination of those things. I think there are some realities of travel events. I still think there is some value of waving the flag. I think that there is a need to get out there and touch real live human beings.

Public Law 94-142 is a different type of law than section 504 or title IV, which is heavily data-oriented. You gather all kinds of statistics and data and you analyze those and you assess where your problems are. I would hate to see Public Law 94-142 become that model in looking at monitoring and compliance. We have to go out and touch real live human beings to assess what the issues are.

I would caution, however—what I am not suggesting is that the Federal Government now assume a responsibility for monitoring local school districts. That is not in the law; that is not the intent of the law. However, the Federal Government does have a responsibility to see that States behave appropriately, and in order to do that, you have got to have some sense of what reality is at the local level.

Mr. **Bartlett**. Mr. Gerry, would you—the system you described, is that generally the system that you think we have in place or——

Mr. **Gerry**. No; I think that the system—and I think my testimony—I was trying to abbreviate a little that whole section, but in my testimony, I think I described it—I think they are moving toward that system.

My sense is, and it is very hard to say in a public forum that going out and getting in touch with people is a bad idea, but visiting a local school system and getting in touch with the problems of a local school system are, to me, two completely different propositions.

That is why I agree that there should be open communication, for example, with parents and advocates. I am really not quite sure what the value of having two people arrive in any school system and spend half a day, at this point in time, talking to people in that school system, or even looking at records, really, is. In other words, it seems to me that we don't have local special education directors that I know of any more in this country who don't know that they are supposed to be IEP's, who don't know—there is a checklist, by the way, that used to be developed. They have mastered the checklist, in my judgment. They can answer the questions on the checklist right.

So if I am going to send two people into a local school system of any size for an afternoon or a day, they are going to get the answers on the checklist right. Theoretically, what I want to know, or what I want to find out is, what problems children in that school system, or in all the school systems, may be having.

I just don't think that is a technique that does that. I think meeting with parents and advocates is one way. But the other thing, Mr. Bartlett, I think is really important is getting the State to do its job better. If the—you know, I don't think the Federal Government needs to collect more data; I think some of the States need to collect more data. I think the States need to take—and there are reasons why the States, I think, historically have been—one of them is this confusion over who is supposed to do what, but as the States, I think, get better at doing their job—and they do need to get better—I think that some of these concerns are going to be, you know, seriously dealt with, and I am—I think using 500 or 600 people effectively at the State level is an awful lot more sensible than trying to use 10, or 20, or 40, or 100——

Mr. **Bartlett**. Mr. Gerry, you advocate, then, in terms of improving the monitoring system which we are all interested in and which I believe that Mrs. Will has done substantially since May 1983, major improvements, but it has been only a little over a year now—you advocate three improvements: increased data collection onsite; improvement of followup of things that we already know; and then third, is increasing the State's monitoring system and compliance system.

So Dr. Weintraub, I would ask if you agree that those three improvements ought to be made and do you think that those are more important or—given everything has limited resources, are those more important or less important than improving the number of travel events?

Mr. **Weintraub**. I guess—I don't want to get caught in a box. I would certainly agree with Mr. Gerry that those three things are important. However, those—accomplishing those three things do not—cannot be done—or are not going to be done by a group of Feds sitting locked up in an office in Washington. It is going to take resources to do it; it is going to take—in 1983, the Federal Government, for the compliance with 94-142, spent in travel under $9,000. Now, you can sum—now, that is not under Mr. Gerry's system——

Mr. **Bartlett**. How much did they spend otherwise in monitoring?

Mr. **Weintraub**. I am talking about for monitoring, the total travel money for monitoring was $8,800.

Mr. **Bartlett**. Do you know how much they spent for monitoring? That is for the——

Mr. **Weintraub**. That is for monitoring.

Mr. **Bartlett**. That is for the travel budget——

Mr. **Weintraub**. That is the travel; OK.

Mr. **Bartlett**. Did they spend anything else?

Mr. **Weintraub**. Plus the salaries of 10 people. OK?

Now, all I am suggesting, and I am—again, I am not being—I don't believe this is Mrs. Will's agenda to do that. I share with you her commitment to improve this. What I am saying is you are not going to be able to deal with what Mr. Gerry suggests without looking at resources. You are not going to be able to deal with it with no travel budget. You are not going to be—plus we can't get to the point in which all of this is a data-oriented system. It has got to be a system that has some basis in which people get out of this town.

I have watched for 17 years now the Federal Government and, very honestly, if I had anything I would do to improve the Federal Government, I would put more of the Federal people on travel so that they got out and saw what real live human beings are and what life is like in New York City and that kind of thing, because unless you do that, somehow you begin to forget what it is about.

I would just also point out—and just in emphasizing some of what Mr. Gerry said—in 1982, when they went out and monitored States, they monitored 12 States; 10 of those 12 States were found to be having serious deficiencies in State monitoring. OK; 10 out of the 12. Now, if 10 out of the 12 have a serious problem in State monitoring, we can't have a system that is totally based upon the adequacy of the State monitoring. We have got to have some balance between that.

Mr. **Gerry**. Maybe I can respond to——

Mr. **Bartlett**. With the chairman's indulgence, and I won't ask——

Mr. **Gerry**. I agree with Mr. Weintraub. I think he is right, those deficiencies were identified. Now, the point is, what happened as a result of that, and I think in each of the cases, the States were asked to—and in most instances that I know of—and I don't know the statistics exactly—have made serious improvements in their monitoring capabilities.

I agree with Mr. Weintraub. We don't start today with 50 State education agencies having a perfect inplace system. I think there are many historical reasons for that, not all of which are because of lack of willingness to do that, but whatever the reasons, it is true and I think the difference may be that I think it is worth a significant investment of time and effort and resources by the Federal Government to put the pressure on the State education agencies to do the job properly, rather than, in a sense, taking the job back away from them and trying to do it directly.

I think you have got to do one or—you have got to kind of do one or the other. Now, I am not against going into local education agencies. I just think that it makes sense to go there, where there is a specific reason to go, and where you have—as I said, I think in Ohio, which I would use as a good example of how to do that—where OSEP staff went into local school districts in Ohio because of the statewide problem that they had identified that had to do with the categorical placement of trainable mentally retarded children. That system worked well and they got at the problem, but the other point is that we are in effect here talking about law enforcement and it is good to say that we are not all that interested in data collection and data has gotten to be kind of one of those words that people don't like to use too much, but the truth is that if we are going to have something that I think both of us would agree with, which is a monitoring system that has the integrity ultimately to enforce—it is not going to be worth too much if it doesn't in the final analysis—then I think we do have to collect data. We have to prove something.

I think we are in an area now, as I see the overall problems, where we are reaching new—sort of what I call second-generation compliance issues, compliance issues where all reasonable people may not agree, and where we may have some problems that are identified—where the Federal Government may identify some problems with the States and vice versa where there is not going to be easy cooperation.

I don't like to envision that model, but I think it is real. The essence, it seems to me, to being in a position to carry out Federal responsibilities is to be able to prove, document, support what the findings are. I think one of the things that I said earlier, that has not been done well enough, either. That is an area of strengthening the training and the actual structuring of the work.

Mr. **Bartlett**. Thank you, Mr. Gerry.

Mr. **Murphy**. Mr. Biaggi.

Mr. **Biaggi**. Thank you, Mr. Chairman.

I have a number of questions, but in deference to time, I will try to limit them. Clearly in the system that we are talking about now, we have the Federal Government talking to the States and the States talking to the locals. The question is really bureaucrats talking to bureaucrats. I have never known any bureaucrat that is not going to defend his position. That doesn't necessarily give you an honest assessment.

Ultimately, I think the optimum situation would be to have some hands-on experiences. Now, I am not so sure that the resources would permit a universal application, but there should be some ability to spot check. You should be able to do it, really, as a matter of routine. If you are going to ask a State agency for their data and their experiences, it is one thing, but they should be checked on.

My experience is that most States will defend their position and give you a rosy picture. I am just talking about human experience over a substantial period of time, but again, we are talking about the practical approach as far as the usage is concerned.

Let me ask you this very briefly. According to our research, 12 States have not been monitored for 4 or more years, including my own State of New York. As of June 1984, 13 additional States have not been similarly monitored in 3½ or more years. To your knowledge, have any of these States requested information of the Department as to why this has not occurred? And if so, what was the response they received? Anyone know?

Mr. GERRY. I will be happy to answer that. Fred, do you want to answer it first?

Well, Mr. Biaggi, I don't work for the Department so I don't know what they have asked of the Department, per se. I only—my best answer would be that New York, I know, for example, just to pick New York, has been involved with extensive discussions over the last 3 years with the Department of Education in a whole series of compliance issues. Now, those did not come about, I gather, from the information you have, as a result of an onsite monitoring, but interestingly, because it illustrates the point about the definitions, during that 4 years, the fact that New York hasn't been monitored onsite, I know for certain, has not precluded major compliance negotiations and changes in New York's operation of a whole variety of things, including its IEP practices and procedures, the appointment of its hearing officers and a variety of other things.

I think maybe what that illustrates in part is that it is a definitional problem because it might suggest, if you just read that list, that none of those 12 States have had any direct contact with Federal regulatory authorities and I don't think that is true. I know it is not true about New York, but I can't answer for the Department.

Mr. BIAGGI. Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Let me pursue for a bit the appropriate State entity or State—rather the appropriate governmental level for the conducting of the reviews and monitoring. I am becoming—and I think many Members of Congress, perhaps—are becoming increasingly concerned that the bureaucracy about which local people most complain is referred to as the Federal bureaucracy, but when you follow their complaints, you find out it is the State bureaucracy that is the problem, not the Federal bureaucracy. The specificity of their complaints leads to the State.

I have become convinced that Governors have established with Federal money enormous bureaucratic fiefdoms in all of these programs, or many of them. Let me then ask, having given you my approaching biases on this matter—let me ask any of you this question. Might we come closer to approaching what you believe would be appropriate monitoring and reviewing if the Federal investigators conducted those on-site at the LEA's, rather than having the monitors reviewing the monitors, the Federal monitors reviewing the State monitors at the State level?

Mr. Gerry.

Mr. GERRY. Mr. Williams, I recognize that you are asking me a national question. If you don't mind, I will answer about Montana as an example because I have just gotten back from doing a training session there. They have, I believe, six special education State staff in Montana, which is a small empire at best, but four of those people are involved in monitoring in one way or another.

Now, those four people are also the people, of course, that are responsible for most of the day-to-day operations at the State level in Montana anyway; four out of the six people, total. Most of them are former school teachers or administrators from Montana. I think all but two, at least, and most of them know a lot more about the State than I suspect—I have to briefly review all the Federal monitoring staff on whatever list we are using.

Now, I think, as a practical matter, that you are wrong in your supposition; that is, that it would be somehow more useful or efficient or less burdensome on the local people in Montana or any others. I have met with local superintendents and special ed directors in maybe 20 to 25 States and when I was writing State regulations in Louisiana, the slogan was: "Better Baton Rouge than Washington." I think that at the local level, there is at least a sense that with State education agencies, particularly in smaller States, people understand something about the actual problems.

Mr. **Williams**. Let me interrupt there, Mr. Gerry, to say that none of us who are concerned about this problem would recommend that all of the investigators live, work, and travel out of Washington. In fact, the Montana review and monitoring people should be Montanans. They should be ex-teachers, but perhaps they should work for the Federal Government rather than the State. It is Federal money that is paying them; it is a Federal act they have to monitor and review, and I think perhaps they should be Federal employees, because when they are not, you end up with another layer and then you are required to do what we do currently, and that is to have Federal monitors review State monitors.

Mr. **Gerry**. Can I respond one more time, briefly, Mr. Williams?

Mr. **Williams**. Yes.

Mr. **Gerry**. I appreciate your point but I want to make one comment about the law. The law defines a free appropriate public education—in the most crucial provision of the law, probably—as, among other things, one that meets the education standards of the State and one of the big problems that would occur if you really had federalized monitoring, if you really hired Federal monitors, is we would lose something pretty important in that section.

If there is one criticism—and I made it twice earlier—to me, it is the States have probably not carried out that section of Public Law 94-142 enough. That is, they haven't set education standards where they are needed and they haven't—often you will find States that don't monitor their education standards, rather, they monitor the Federal requirements. I think the genius of the law in large part is the combining of those two things. That is, State education standards and Federal, general Federal requirements.

So I think if you followed the logic, you would end up with Federal—you could have Federal employees monitoring State education standards or nobody monitoring them, or you could have one—you could have State staff monitoring State special ed standards and a Federal staff monitoring Public Law 94-142 standards. Those don't seem to me to be attractive alternatives.

Mr. **Williams**. Mr. Weintraub.

Mr. **Weintraub**. I think the basic nature of Public Law 94-142, its strength and its weakness, is that it is a State-oriented law. I think it is one of the reasons, very honestly, why it has worked as well as it has. It is also one of the problems that keeps it from working on some of the things that still yet need to work.

I would—I guess my experience with the Feds is I would hate to see the day come that the Feds are responsible for going out into school districts. I think a lot of—very honestly, a lot of the problems we have had over recent years has been the OCR approach, which is that they go running roughshod into school districts investigating and the result is that we end up with a great deal of confusion and inconsistency from school district X to school district Y.

I think, though—I have heard some of the same complaints, and the complaints are less over the monitoring issues and some of the hostility toward the States—it is that one of the things that the States have done is the States have used Public Law 94-142 in the Federal law and regulations and have added a whole variety of their own requirements and things on top of it, and when somebody says: "Why do we have to do that," the answer is that the Feds made you do it.

Well, what has happened is that a lot of localities are beginning to sort out the difference between who really is making me do what, and I think somehow some clarification of that in the long run would be helpful. But I am not one who would like to see monitoring on the whole of local districts become a Federal responsibility. I think the States are getting better at it. I am right now concerned about the fact that I don't think the Federal Government is assuming its responsibility, as limited as it is, and until it does, then I am concerned about the degree to which we can project the States assuming theirs.

Mr. **Williams**. I appreciate the response and suggestions of both of you. I think we all want to maintain flexibility in monitoring and reviewing these programs, the administration of them. We want the administration of the programs to reflect the needs of the local citizens. Sometimes we do that in Federal efforts and too often we don't. I think that we are beginning to see evidence that one of the reasons that we find it difficult to reflect the true needs, or meet the true needs of local constituents is because of layered-over bureaucracies with far too much money going to administer the programs, even though sometimes it is a 15, or in the instance of Public Law 94-142, I think a 5-percent cap.

My point, perhaps, is this: If we are going to maintain the proper balance between the necessities of authority and responsibility for Federal funds—if we are going to require these localities to carry out the letter of the law, we can best do that with the fewest layers of administration and bureaucracy possible.

When we, at the Federal Government, spend your tax dollars, it seems to me that we have a responsibility to monitor the use of those tax dollars as efficiently and effectively as possible. When we put Governors in the way of that, it seems to me that is exactly what happens. They too often get in the way of it, and I think that we are seeing that happen—not the Governors are intentionally doing it, but we are seeing that middle layer of bureaucracy cause that.

We have been working on this problem some in the matter of education and it is astounding to find out that the ratio of administrators to students is increasing far greater in this Nation than the ratio of teachers to students, not because of the Federal bureaucracy, but because of the State education bureaucracies and the local education bureaucracies.

So I am just saying, as Americans in this Presidential campaign to turn their ire on bureaucracy again, they ought to look at bureaucracy in all of its layers and levels. Well, six people, Mr. Gerry, in Montana administering this program isn't very many, that is correct; there is probably a tenth of a person in Washington monitoring that effort in Montana and neither is that a kingdom.

Mr. MURPHY. OK, we thank all of you gentlemen for participating this morning. We appreciate your testimony very much. Thank you.

The next witness we have scheduled is Mr. Harry Singleton, Assistant Secretary for the Office of Civil Rights in the Department of Education.

Mr. Singleton.

First, I want to thank you, Mr. Singleton, for rearranging your schedule and enabling you to be with us this morning.

STATEMENT OF HARRY M. SINGLETON, ASSISTANT SECRETARY FOR CIVIL RIGHTS, DEPARTMENT OF EDUCATION, ACCOMPANIED BY EDWARD A. STUTMAN, ATTORNEY ADVISER

Mr. SINGLETON. Thank you, Mr. Chairman. I, too, wanted to extend a personal note of thanks to you for your patience and understanding as I tried to juggle some rather competing demands on my schedule so I could be here today.

Also, for the record, I would like to note that I am accompanied this morning by Mr. Edward Stutman, who is my attorney adviser.

Mr. MURPHY. Edward——

Mr. SINGLETON. Stutman, S-t-u-t-m-a-n.

Mr. MURPHY. Thank you. All right, you may proceed, Mr. Singleton.

Mr. SINGLETON. Mr. Chairman, in the interest of time, I would like to seek unanimous consent to have entered into the record my prepared statement and I will summarize it.

Mr. MURPHY. We appreciate that.

Mr. SINGLETON. I appreciate the opportunity to participate in these hearings this morning. The Office for Civil Rights is responsible for enforcing civil rights statutes that prohibit discrimination on the basis of race, color, national origin, sex, handicap and age in all programs and activities which receive Federal financial assistance.

These statutes include title VI of the Civil Rights Act of 1964, title IX of the education amendments in 1972, section 504, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Among these, section 504 is most relevant to these proceedings since it bars discrimination on account of handicap in programs or activities receiving Federal financial assistance.

A major portion of the section 504 regulations are devoted to assuring that handicapped children receive appropriate educational services, and in that respect, the section 504 regulations and those implementing the EHA parallel each other.

This results in OCR having a major responsibility for ensuring that handicapped children receive a free and appropriate education. The parallel responsibilities of OCR and OSERS spurred the collaborative experiment known as the memorandum of understanding or MOU which OCR and OSERS entered into on October 15, 1980; 45 percent of the complaints received by OCR in this and the preceding fiscal year allege that agencies discriminate against handicapped children in violation of the section 504 regulation; 43 percent of the complaints concluded in that period posed similar issues.

Thus, much of OCR's resources are devoted to ensuring that handicapped children are afforded the free and appropriate education to which they are entitled. Most frequently, that goal is achieved voluntarily through negotiations with recipients, but in other cases, despite serious negotiations, OCR is not able to achieve voluntary compliance and does initiate formal enforcement action.

There is much more to the OCR story in this regard, but for the moment, I will simply state that we are proud of OCR's record of protecting the rights of handicapped children under section 504.

As I understand it, in 1980, a Task Force on Equal Education Opportunity for Handicapped Children convened to review criticism that State and local agencies were sometimes receiving conflicting information on compliance issues from OCR and the Bureau of Education for the Handicapped, OSERS' predecessor office.

The MOU was an outgrowth of this task force. In the MOU, OCR and OSERS sought to routinize transfers of certain information between the two offices and experiment with collaboration on a range of compliance activities which, prior to that time, each office had conducted independently.

The principal goal of the MOU was to unify the Department's approach to enforcement of parallel provisions of the EHA and section 504 when enforcement activity was contemplated by one or the other office against individual education agencies. The parties were meticulous to ensure that the MOU would not transfer, nor give the appearance of transferring responsibility for enforcing the EHA to OCR.

As of June 1984, OCR reviewed and commented on 23 EHA part B plans and received 154 complaints, which were referred by OSERS to OCR under the terms of the MOU.

Experience in implementing the MOU has revealed its weaknesses. There were some procedural problems initially, but they were, for the most part, relatively minor, inevitable gliches that would attend startup of any highly complex activity between two offices.

The technicalities of coordination between OSERS, which operates out of Washington, DC, and OCR, which operates out of 10 regional offices, in addition to its headquarters in Washington, DC, caused some problems with the implementation of the MOU. Mechanisms for the transfer of information were difficult to put into place. The differences between the legal requirements of antidiscrimination enforcement under section 504 and enforcement the EHA, under a formula grant program, were sometimes difficult for the staff to master.

In theory, though, the combination of OCR's legal expertise and OSERS' expertise in special education should have produced a blending of knowledge that would strengthen compliance activities. However, that melding did not come about. In addition, OCR's need to redirect resources to respond to pressing priorities created by court orders, to which OCR is subject, also played a role in eclipsing parts of the MOU.

Assistant Secretary Will and I recognize that there have been problems, but we have also concluded that the concept of collaborative agreement is important. For this reason, we have begun discussions with the goal of developing a new and workable MOU and we are confident that we will succeed.

Thank you, Mr. Chairman, and I would be happy to answer any questions that you or members of the subcommittee might have.

[Prepared statement of Harry M. Singleton follows:]

PREPARED STATEMENT OF HARRY M. SINGLETON, ASSISTANT SECRETARY FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to participate in this oversight hearing to review, among other things, the implementation of the Memorandum of Understanding (MOU) operating between the Department of Education's Office of Special Education and Rehabilitative Service (OSERS) and the office for Civil Rights (OCR).

As you know, Congress sought to ensure that handicapped children were afforded appropriate educational services in the last restrictive environment through enactment of the 1975 amendments to the Education of the Handicapped Act (EHA). Two years earlier, the Congress acted to prohibit discrimination against handicapped persons through passage of Section 504 of the Rehabilitation Act of 1973. OSERS is responsible for enforcing EHA and its implementing regulations. For the present, let me turn your attention to OCR and its duties to enforce Section 504 in all programs and activities which receive Federal financial assistance disbursed by the Department.

Section 504 was the third of four anti-discrimination statutes passed by Congress which OCR enforces. Regulations to implement Section 504 were issued by the Secretary of the former Department of Health, Education and Welfare on May 4, 1977. Upon establishment of the Department of Education in 1980, those regulations were republished without substantive change (34 C.F.R. Part 104). A major portion of the Section 504 regulations are devoted to assuring that handicapped children are not discriminated against in the provision of educational services.

The Section 504 regulations and those implementing the EHA parallel each other in many important respects. This results in OCR having, as does OSERS, a major responsibility for insuring that handicapped children receive a free and appropriate education. The parallel responsibilities of the two offices spurred the collaborative experiment known as the Memorandum of Understanding which OCR and OSERS entered into on October 15, 1980. OCR's experience implementing the MOU is best understood in the extent of OCR's complete record in enforcing the civil rights of handicapped children.

OCR's efforts to ensure compliance with Section 504 are principally centered on the activities of state and territorial education agencies (SEAs) and approximately 16,000 local education agencies (LEAs). OCR relies on its complaint investigation and compliance review processes to ensure compliance with the statutes it enforces. During the 20-month period which roughly coincides with my tenure, October 1982 thru May 1984, OCR received 3,267 new complaints and concluded 3,674 of its pending complaints. It initiated 424 compliance reviews and concluded 432, some of which were started in previous years. Forty-five percent (1,475) of the new complaints and 43 percent (1,608) of the complaints concluded alleged that education agencies discriminated against handicapped children in violation of the Section 504 regulation. Of the 424 compliance reviews started in this period, 259 targeted elementary and secondary programs, and of these, 72 percent (187) had, as part of the focus, discrimination against handicapped children.

These numbers alone, however, fail to reveal the extent to which OCR has taken steps over the past two years to confront controversial issues represented in outstanding cases. To illustrate, following four months of negotiations which I initiated, in May 1983, OCR concluded an agreement with one state which resolved 28 cases in which OCR had found that state and local education agencies had denied handicapped children free appropriate educational services. As part of the settlement, the SEA agreed to reimburse all of the complainants for the cost of related services, including room and board, which they had incurred due to the violations. The centerpiece of this settlement was an opinion issued by that state's Attorney General which held that psychotherapy was not a "medical service," but was a "related service which LEAs must provide to a handicapped child where appropriate." The lack of agreement between the Department and the SEA on this and other issues had lingered for four years.

In other cases, despite serious negotiations, OCR was not able to achieve voluntary compliance and initiated formal enforcement action. Over the past year, OCR referred 10 cases to the Department of Justice seeking enforcement of the rights of handicapped children.

Additionally, OCR initiated administrative enforcement action which offers the potential of fund termination in Section 504 cases against six other state and local education agencies. In one of those cases, OCR found that an LEA violated Section 504 by its categorical refusal to consider an individual handicapped child's need for services beyond the regular school year. This case has recently been settled with an written agreement which included as assurance from the SEA, not an original party to the action, that its regulations would be revised to instruct LEAs that the need for extended school year services must be considered in developing programs for handicapped children. The other cases remain in active litigation with OCR attorneys in the lead.

This brief recitation of OCR's more recent efforts to ensure that handicapped children are not subjected to discrimination as they seek educational services is only part of the story. Needless to say, I am proud of OCR's record of protecting, by whatever means available to it, the rights of handicapped children.

As I understand it, in 1980, a task force on Equal Education Opportunity for Handicapped Children convened to review criticism that State and local agencies were sometimes receiving conflicting information on compliance issues from OCR and the Bureau of Education for the Handicapped, OSERS predecessor office. The MOU was an outgrowth of this task force.

In the MOU, OCR and OSERS sought to routinize transfers of certain information between the two Offices and experiment with collaboration on a range of compliance activities which, prior to that time, each Office had conducted independently. The principle goal of the MOU was to unify the Department's approach to enforcement of parallel provisions of the EHA and Section 504, when enforcement activity was contemplated by one or the other Office against individual education agencies. The parties were meticulous to insure that the MOU would not transfer, nor give the appearance of transferring responsibility for enforcing the EHA to OCR.

As of June 1984, OCR reviewed and commented on 23 EHA-Part B plans and received 154 complaints which were referred by OSERs to OCR under the terms of the MOU.

Experience in implementing the MOU has revealed the weaknesses that concern you today. There were some procedural problems initially, but they were for the most part, the relatively minor, inevitably gliches that would attend start-up of any highly complex activity between two offices.

The technicalities of coordination between OSERS which operates out of Washington, D.C., and OCR, which operates out of 10 regional offices, in addition to its headquarters in Washington, D.C., caused some problems with the implementation of the MOU. Mechanisms for the transfer of information were difficult to put in place. The differences between the legal requirements of antidiscrimination enforcement (Section 504) and enforcement under a formula grant program (EHA) were sometimes difficult for staff to master.

In theory the combination of OCR's legal expertise and OSERS expertise in special education should have produced a blending of knowledge that would strengthen OSERS' compliance activities. However, that melding did not come about. In addition, OCR's need to redirect resources to respond to pressing priorities created by court orders to which OCR is subject also played a role in eclipsing parts of the MOU.

Assistant Secretary Will and I recognize that there have been problems, but we have also concluded that the concept of collaborative agreement is important. For this reason, we have begun discussions with the goal of developing a new and workable MOU and we are confident that they will succeed.

Thank you.

Mr. MURPHY. Thank you very much, Mr. Singleton.

Your MOU does call for a full-time coordinator, does it not?

Mr. SINGLETON. That is correct.

Mr. MURPHY. Do you have a full-time coordinator for the MOU at the present time?

Mr. SINGLETON. We have a coordinator presently, Mr. Chairman——

Mr. MURPHY. Who is that?

Mr. SINGLETON [continuing]. In terms of the MOU.

This is a staff person in my Policy and Enforcement Service. His name is Sternberg.

Mr. MURPHY. Sternberg? He has other functions in addition to that?

Mr. SINGLETON. Yes; he does have other functions.

Mr. MURPHY. So he is not the full-time coordinator, but he is the coordinator.

Mr. SINGLETON. That is correct.

Mr. MURPHY. Do you believe that he can handle all of the functions and complaints that come in under the MOU, not being full time, or not being designated as full-time coordinator, particularly when MOU calls for one.

Mr. SINGLETON. Well, Mr. Chairman, I think that it is important to put the MOU in perspective. There is no statutory requirement for the MOU, nor is there anything in the regulations calling for it. The MOU is nothing more than an administrative agreement between two assistant secretaries.

The MOU was put together some time ago. In OCR's instance, it was like four assistant secretaries ago. I think in OSERS' case, maybe five assistant secretaries ago.

Our styles of operation, the way the office is organized, all of that has changed. As a result, I think that the present MOU and the items it calls for may no longer be relevant when you view it in the present context that we have.

Now, don't misunderstand what I am saying. There is a need for collaboration between OCR and OSERS, but the mechanism which we use for that, I think, needs a substantial overhaul.

Mr. MURPHY. OK.

Mr. Biaggi, do you have any questions of Mr. Singleton? I have others, but I will defer to my colleagues.

Mr. BIAGGI. Mr. Singleton, I am in receipt of an internal memo from your office in which your staff advised you to approve a request by the Special Education Program Office to become involved in Office of Civil Rights compliance activities in Illinois and you denied that request and your rationale was—and I quote: "The stakes are too high now to grant carte blanche involvement with the attendant risks of our hands being tied or the process slowed down because of SEP participation."

Please tell me what you meant.

Mr. SINGLETON. What I meant, very simply in that particular case was that it was one of the cases identified by the court in *Adams* v. *Bell*, that had to be resolved by June 9, 1983. The complaint in that case had been filed in 1981. We had done an onsite investigation in 1981, and issued an LOF in February—I believe it was—of 1983.

SEP had been advised of that case prior to the time that particular memo was written. The fact of the matter was that I was operating under the dictates of a court order to resolve that case just as quickly as I could. At that point, in my judgment, there was no time for us to get involved with SEP's investigation because the time had just simply run out.

Furthermore, the way the request came to me was up through informal staff channels. I was not aware that the Assistant Secretary for OSERS wanted this particular participation or involvement and I think I may have stated that in the memo. As far as I was concerned at that point, all I had was some scuttlebutt among staff people.

Mr. BIAGGI. This is from—I think it is more than scuttlebutt. It is from Antonio J. Califa, Director for Litigation Enforcement and Policy Service. It is a memorandum.

Mr. SINGLETON. That is not the point that I am making, Mr. Biaggi. The point I am making is that what Mr. Califa was reporting to me was something that he had picked up from one of his staff people who in turn had picked it up from a staff person in OSERS.

What I am saying to you is I received no formal request from the Assistant Secretary for OSERS to join in that investigation. That, in my judgment, would have been very significant and I certainly would have taken it into account.

Mr. BIAGGI. What you are saying is this memorandum is confined strictly to that isolated case. That is the basis for this memorandum?

Mr. SINGLETON. Yes. That one particular case involving Illinois, I believe it was.

Mr. BIAGGI. Well, it would seem to me that it would be more specifically delineated here because the reference here is OCR compliance activities, rather than just dealing with the case in question.

Mr. SINGLETON. Maybe, Mr. Biaggi, your staff hasn't given you the entire memo, but the first page of the memo has a subject line and it indicates that it is OCR's investigation in Illinois.

Mr. BIAGGI. It is possible because I am looking at page 4.

Mr. SINGLETON. Yes; that is what I suspected. You didn't have all of the information.

Mr. BIAGGI. All right. Thank you.

Mr. MURPHY. Mr. Williams.

Mr. WILLIAMS. Thank you.

In Mr. Weintraub's testimony, he passed along concerns which have been expressed to him from parents, advocacy and professional groups. Primarily, he focused on three concerns. Let me remind you of them and then ask you to comment on that.

First—quoting now from his testimony:

> A monitoring schedule that is in constant flux. The Department's monitoring schedule has been subject to such frequent and sudden changes that one cannot reasonably be certain that a State will actually be monitored onsite as originally announced.

Second:

> Lack of advanced information on the areas to be monitored. Noticeably absent from the Department's efforts to involve parent, advocacy and professional groups is

the provision of advanced information on the specific areas under consideration during the program administrative review.

Finally,

Lack of followup regarding monitoring concerns and outcomes. In spite of these previously mentioned difficulties, many Statewide parent, advocacy and professional groups take the time to become involved in the monitoring process; however, all too often, they do not receive any feedback regarding their specific concerns, nor are they informed about the Department's findings.

First is a monitoring schedule that is in constant flux.

Mr. SINGLETON. I don't know what Mr. Weintraub is addressing that comment to with respect to OCR.

Mr. WILLIAMS. He refers to the Department.

Mr. SINGLETON. Yes; he does, and I suspect that he may be making comments that are more directly related to the OSERS program than OCR, but OCR does conduct what we call compliance reviews, along with our complaint processing.

Compliance reviews are more discretionary than a complaint is and how many compliance reviews we do, of course, depends upon the resources that we have available after we have dealt with our complaint workload.

The *Adams* order that we operate under sets very specific, very definite time frames by which we have to complete our complaint processing, as well as any compliance reviews that we may initiate.

As far as a schedule is concerned, we publish every year what is known as an Annual Operating Plan in which we state the areas in which we will be conducting compliance reviews. Each regional office puts together a list of compliance reviews that they intend to conduct that particular year, subject to my approval, and, once approved, that list is what they follow.

Consequently, I can't understand his particular point, as it relates to OCR, about the schedule being in constant flux. Unless, of course, he means just the usual vagaries attendant with anything of this sort, juggling schedules among very busy staff, not only in the OCR operation, but in the individual LEA's and SEA's as well.

Mr. WILLIAMS. And the third was lack of followup, which probably does—probably was influenced more by the other agency than yours.

Mr. SINGLETON. Yes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. MURPHY. Thank you, Mr. Williams.

Mr. Bartlett.

Mr. BARTLETT. Mr. Singleton, I apologize for missing your verbal testimony. I have reviewed your—I have another hearing going on, but I have reviewed your written testimony and also received a summary of your testimony, your verbal testimony before this committee.

Mr. Singleton, first of all, I compliment your record in the things that you have done in the Office of Civil Rights, and particularly as I see the statistics with regard to section 504 and handicapped rights of 45 percent of complaints in 1983 and in 1984 with 504 and 43 percent of those other cases resolved that had to do with 504 and I think you have reviewed 23 plans and so forth, so I think that we do owe you a great debt for the achievements that you have accomplished.

Mr. SINGLETON. Thank you, Mr. Bartlett, I appreciate that.

Mr. BARTLETT. I note that you had stated that you are working or you intend to work or you are preparing plans—and I think both Dr. Weintraub and Mr. Gerry and other witnesses—particularly Dr. Weintraub, I noticed—noted that there might be a need for some new approaches to a new kind of monitoring and review plan, and therefore, you have stated that you would—you are reviewing some new aspects or new—some changes in the memorandum of understanding and you are negotiating that or you plan to discuss that with Mrs. Will's department.

I suppose my observation—and I put it in the form of a question—would be that I think Congress would sincerely hope, and this committee—it would be good for everyone for you to continue what you and Mrs. Will have begun—and that is, your two agencies working very closely together on a continuous kind of communication. I think you have done that.

In the future, I think the kind of progress we have made now in terms of that communication on specific cases would be beneficial for everyone, so I would hope in that memorandum of understanding, or even before, you could explore some ways to have a periodic, a regular kind of communication setting between yourself and the Assistant Secretary directly so that you could communicate on specific cases and specific complaints and make sure—those are very important complaints and very important cases and make sure that there is complete good communication between you and the Assistant Secretary on these very important cases.

I would hope you would consider including that kind of procedure in your memorandum of understanding.

Mr. SINGLETON. Well, we will certainly look into that, Mr. Bartlett. I think that it is important to note that the communications between me and the Assistant Secretary for OSERS is very good. We have recognized that we do have problems with the MOU—and have set up a task force of staff members from both of our operations to review this. In fact, the task force has had one or two meetings, to date, to try and resolve some of these things. In the meantime, however, Mrs. Will and I have continued to communicate and have worked out a system whereby I share my policy documents with her for her input and comment, as well as findings on some of our more controversial cases arising under section 504 that she may be interested in, particularly with respect to their impact on Public Law 94-142, which she enforces.

Mr. BARTLETT. I thank you for your consideration and for your testimony.

Mr. MURPHY. Mr. Singleton, what happens to the information when a complaint is received from the field to one of your regional offices? How does the flow get back to Washington or does it get to your MOU coordinator. When you have a complaint in one of your regional offices, what is the——

Mr. SINGLETON. The complaint would be handled in the following fashion: It would be received in the regional office. The regional operations are the only places where complaints are received. We don't receive any complaints in headquarters here.

Mr. MURPHY. How many regional offices do you have?

Mr. **Singleton**. We have 10 regional offices. One of those regional offices has a suboffice because of the size of the region it is in and the number of complaints that it gets. So, for all intents and purposes——

Mr. **Murphy**. Basically 11.

Mr. **Singleton** [continuing]. You could say 11, yes. So the regional office would receive the complaint; it would then begin to process it. First the regional office would acknowledge the complaint by writing the complainant stating that it had received a complaint and it is complete. The regional office would then attempt by what we call the early complaint resolution process to mediate any disputes between the complainant and the local education authority. If that doesn't work, then we then go on to conduct an investigation.

Once our investigation has been completed, we will then issue a letter of findings, and that will be either a letter of findings of violation, or violation corrected, or no violations cited letter.

Mr. **Murphy**. Now, at that stage, or before that stage, does your MOU coordinator receive a notice of the complaint?

Mr. **Singleton**. No; the MOU coordinator would not receive a notice of that.

Mr. **Murphy**. How can, then, that person share the information with SEP if he doesn't have the information?

Mr. **Singleton**. Well, that is precisely the point, Mr. Chairman. As I stated earlier, the MOU was based upon procedures and personnel and operating methods and styles that are now antiquated. The MOU was based upon a structure that was in existence in 1980. That is not the case——

Mr. **Murphy**. You don't believe, then, it is necessary for SEP to know?

Mr. **Singleton**. No; I don't necessarily believe that is the case. I believe that there is a need for SEP to know and Assistant Secretary Will and I have had discussions along those lines, and we are, in fact, now working out some arrangements to share that type of information.

Mr. **Murphy**. I would think that would be necessary.

Mr. **Singleton**. Absolutely.

Mr. **Murphy**. Now, the number of notifications from your office to SEP has decreased significantly in the last 4 years. Is that because of your interpretation of the policy and the arrangement between the two offices?

Mr. **Singleton**. I think that you may be referring to what has been commonly called in the past the "early warning report." I think that was something which was routinely sent to SEP, but as I said, our practices have changed. You see, there used to be a situation in the Office for Civil Rights where complaints, once they were received in the regions, investigated by the regional offices, and findings had been made, they were sent to headquarters and the legal staff in headquarters went over exactly the same ground on every one of these complaints that had taken place in the region. This was slowing us down.

We are subject to court orders. The court sets very strict time frames by which we have to operate. This procedure had been identified not only by me, but a number of independent sources as an unnecessary review causing delay. I eliminated that.

It makes no sense to have a regional operation set up for the intake and processing of complaints if you are going to reinvent the wheel every time those complaints are sent into headquarters. So, I changed that procedure, and as a result, that early warning report, as it was called, went out the window and something was substituted in its place.

Mr. **Murphy**. What?

Mr. **Singleton**. It is called an enforcement activities report, which is sent to me by each regional office as to cases where findings of violation have been found.

Mr. **Murphy**. I note in your testimony that you have referred a number of complaints to the Justice Department. Do you know the status of those complaints?

Mr. **Singleton**. No; I don't know the status of those complaints, Mr. Chairman.

Mr. **Murphy**. Do you continue to monitor those after Justice has received the complaints?

Mr. **Singleton**. Yes. My enforcement staff does monitor those cases once they have been sent to Justice.

Mr. **Murphy**. Can you provide us with that information?

Mr. **Singleton**. Certainly, I would be happy to provide it for the record.

Mr. **Murphy**. We would appreciate that.

Are you satisfied with Justice's handling of the complaints or is that something you are going to have to followup on as well?

Mr. **Singleton**. Well, as I said, I don't have any specific knowledge at this point how Justice has been handling those cases. From what I can see, I think that they are doing a reasonable job.

Mr. **Murphy**. Can you get us the information as to the status of the complaints and then perhaps, between you and I, we can determine whether or not Justice is following them up diligently?

Mr. **Singleton**. Certainly. We will be happy to provide that to you.

[The information referred to follows:]

INFORMATION AS REQUESTED AT THE HEARING FOR INSERTION IN THE RECORD

(1) A list and status of cases referred to the Department of Justice (DOJ).—The following is a listing of all cases referred to the Department of Justice since January 1, 1981. We have included the latest status of the case as known to OCR from information provided by DOJ.

West Feliciana Parish School District, Louisiana. Referred to DOJ: July 28, 1982. Status: A consent decree was approved by the Federal District Court for the Middle District of Louisiana on August 5, 1983.

Alabama State System of Higher Education. Referred to DOJ: January 4, 1982. Status: DOJ filed suit in Federal District Court in May, 1983.

Ohio State System of Higher Education. Referred to DOJ: February 18, 1982. Status: DOJ will send a letter to the Assistant Attorney General in Ohio inviting further negotiation. DOJ is considering filing a complaint in the event that negotiations break down.

Bakersfield City Schools, California. Referred to DOJ: July 9, 1982. Status: On January 23, 1984, DOJ simultaneously filed a complaint and consent decree in Federal District Court, accepting student assignment plan.

University of Alabama in Birmingham. Referred to DOJ: June 23, 1983. Status: Awaiting DOJ decision on whether to sue.

Anna-Jonesboro Community High School, Illinois. Referred to DOJ: March 5, 1983. Status: On March 5, 1984, DOJ informed OCR that it would not seek enforcement in this case.

Clover Park School District, Takoma, Washington. Referred to DOJ: June 23, 1983. Status: Awaiting DOJ decision on whether to sue.

Coloma Community Schools, Michigan. Referred to DOJ: June 23, 1983. Status: Awaiting DOJ decision on whether to sue.

Malcolm-King: Harlem College Extension, New York, New York. Referred to DOJ: December 8, 1983. Status: On February 24, 1984, DOJ declined to file suit.

Bledsoe County School District, Tennessee. Referred to DOJ: September 20, 1983. Status: On November 30, 1983, following an EEOC settlement in this case, DOJ decided against further legal action.

Dayton Public Schools, Ohio. Referred to DOJ: June 23, 1983. Status: DOJ declined to take action on August 8, 1983.

Dillon County School District No. 2, South Carolina. Referred to DOJ: June 23, 1983. Status: DOJ declined enforcement on May 24, 1984.

Illinois State Board of Education. Referred to DOJ: June 23, 1983. Status: DOJ sent a letter to Assistant Secretary for Special Education and Rehabilitation Services (OSERS) on January 25, 1984 stating that DOJ did not believe this case involved a Section 504 violation, but possibly a violation of EHA. The Assistant Secretary for OCR sent a memo to OSERS on February 9, 1984 stating that OCR believed this case to be a violation of Section 504. Awaiting DOJ decision on whether it will initiate suit.

Lawrence Public School District, Michigan. Referred to DOJ: June 23, 1983. Status: Awaiting DOJ decision on whether it will initiate suit.

Indiana University/Purdue University at Indianapolis, Indiana. Referred to DOJ: June 23, 1983. Status: Awaiting decision by DOJ on whether it will initiate suit.

Pittsburgh School District, Pennsylvania. Referred to DOJ: October 10, 1983. Status: Awaiting DOJ decision on whether it will initiate suit.

Chicago Board of Education, Illinois. Referred to DOJ: September 20, 1983. Status: Awaiting DOJ decision on whether it will initiate suit.

Illinois State Board of Education. Referred to DOJ: June 23, 1983. Status: OCR met with DOJ on November 7, 1983. Reached as to whether to sue or seek reimbursement. Awaiting decision by DOJ on whether it will initiate suit.

Mr. MURPHY. Thank you.

Now, I am sure you are aware of the recent Supreme Court decision in *Smith* v. *Robinson*. It has serious implications for handicapped children and youth. What is your interpretation or reading of your office's responsibilities now in relations to that decision?

Mr. SINGLETON. Mr. Chairman, that is an excellent question. I have not had an opportunity to fully analyze that case yet. I have read some summaries of it. My staff is currently analyzing the implications of that case now and before I would even hazard a guess on that, I would like to have the benefit of that analysis, as well as some discussions with our Office of General Counsel.

So with all due respect, I would like to decline to comment on that right now.

Mr. MURPHY. Could you send to us a letter, which I will, of course, share with all of my colleagues on the committee, of what your interpretation of responsibilities are.

Mr. SINGLETON. Once that analysis has been completed, yes. I would be happy to, Mr. Chairman.

Mr. MURPHY. All right.

[The information referred to follows:]

(2) An analysis of OCR's interpretation of the Smith v. Robinson decision on its responsibilities.—I am still in the process of analyzing this decision and will communicate with you further as soon as that process has been completed.

[No reply was received from Mr. Singleton.]

Mr. MURPHY. Now, one final question Mr. Miller of California had raised and requested me to raise, that OCR administratively apparently closed a complaint in September of 1983, a complaint that was filed in 1979, even though SEP is to review that complaint this year. Are you aware of that case? SEP actually is—I have got a whole document here from the superintendent of public instruction of California State Department reference docket number 09801046.

> This is to advise the U.S. Department of Education Office of Civil Rights is administratively closing the following complaint: Legal Aid Society of Orange County and Western Law Center for the Handicapped versus California State Department of Education, and with that number. This closure is based on the fact that the same issues raised by the above complaints have been and will again in the near future be reviewed by the U.S. Department of Education Office of Special Education, OSE. At this time, therefore, the investigation by OCR would represent unnecessary duplication.

Your office, on September 27, 1983, just closed the case, without taking any further action or apparently without referring it to Justice.

Mr. SINGLETON. Well, I am not familar with that particular case, Mr. Murphy. I would suggest that in situations like that my staff makes no—is not supposed to, at any rate—make any findings under the EHA. We deal with section 504 only.

If some of those issues are involved here, that may be the reason why it was dismissed. The legal staff determined that there may not have been any violations under section 504.

Mr. MURPHY. Well, there is a considerable delay in the processing of this—some 14 months after you closed it. May I prepare a letter for you, and I will attach a copy of this document, and that would be another matter that I would request you submit to us.

Mr. SINGLETON. Certainly.

Mr. MURPHY. Thank you.

[The information referred to follows:]

QUESTIONS RELATING TO SEPTEMBER 27, 1984, CORRESPONDENCE BETWEEN WILLIAM HONIG, SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE STATE OF CALIFORNIA DEPARTMENT OF EDUCATION, AND ROBERT BROWN, REGIONAL DIRECTOR OF THE REGION IX OFFICE FOR CIVIL RIGHTS

Question 1. OSEP informs the Subcommittee that it will conduct a site visit of California in November 1984. Did Mr. Brown have any reason to believe other than the fact SEP would make their site visit in January of 1984? (SIC).

Answer. In a memorandum dated September 2, 1983, the Assistant Secretary for Civil Rights asked the Assistant Secretary for Special Education and Rehabilitation Services for confirmation that OSERS intended to conduct a full program activity review (PAR) in California in January, 1984. In a memorandum dated September 7, 1984, AS/OSERS confirmed the pendency of the California PAR review and the date.

Question 2. Would OCR have administratively closed the case had they known that SEP would be in California in November of 1984 instead of January 1984?

Answer. If it had been OSERS' plan, in September, 1983, to conduct the California PAR review in November, 1984, OCR would not have closed the complaint in September, 1983.

Question 3. When was OCR told of SEP's decision to move back their date for a site visit?

Answer. Prior to the hearing, OCR was never informed of OSERS' decision to conduct the California PAR review at a later date.

Question 4. What assurance does OCR have that SEP will follow up on the complaint?

Answer. OSERS has stated that the adequacy of the arrangement by which the California Department of Education assures the provision of occupational and physical therapy to handicapped children is of concern. That provides confidence that

OSERS will exert its authority, as necessary, to insure that Federal requirements are met.

Question 5. Does OCR plan to re-open the complaint before the November 1984 SEP visit?

Answer. Appropriate OCR staff will be instructed to consider OCR's options regarding examining the arrangement whereby the California Department of Education assures the provision of related services to its handicapped children.

Mr. MURPHY. OK, thank you very much, Mr. Singleton, we appreciate your testimony. Thank you, Mr. Stutman.

The final witness we have this morning is Mrs. Madeleine Will, Assistant Secretary for Special Education and Rehabilitation Services, with the Department of Education.

Mrs. Will. Good morning, Mrs. Will, how are you?

Ms. WILL. Fine, thank you.

Mr. MURPHY. Thank you for being with us this morning. When we originally scheduled this hearing, we did not contemplate us going into session on Wednesday until at least noon and perhaps 3:00. However, session was moved up because of other matters. I would, therefore, suggest—and I am sure my colleagues will agree with me—that we proceed with your testimony and questioning on the Office of Special Education and that we receive your printed testimony on Rehabilitation Services and we will not get into that in detail, nor will we question you on rehab because of time. Not to say that that is not important, because we feel it is very important, but that it is so important that I don't think we have the time to get into it in detail today. So what we might do is take your testimony and either query you in writing or ask you to come and meet with us again at some future date.

So we will—yes, Mr. Biaggi.

Mr. BIAGGI. I am obliged to leave, but I really was curious. I have never met Mrs. Will before and I don't know when you entered this room, but so far this morning, it seems to be a tribute to Mrs. Will and I just wanted to see the woman who was deserving of all these accolades. I am delighted to see you for the first time and join with my colleagues in commending you on the work you are doing. Clearly, it is an area of great sensitivity and obviously you are moving in the right direction.

Ms. WILL. Thank you, Mr. Biaggi.

Mr. BIAGGI. Apparently it is due to your leadership.

Ms. WILL. Thank you.

Mr. MURPHY. Thank you, Mr. Biaggi, for attending and we will, of course, have copies of the testimony for you.

You may proceed, Mrs. Will.

STATEMENT OF MADELEINE WILL, ASSISTANT SECRETARY FOR SPECIAL EDUCATION AND REHABILITATION SERVICES, DEPARTMENT OF EDUCATION, ACCOMPANIED BY JOAN STANDLEE, DEPUTY ASSISTANT SECRETARY, OFFICE FOR SPECIAL EDUCATION AND REHABILITATION SERVICES, AND WENDY CULLAR, DIRECTOR, OFFICE OF SPECIAL EDUCATION PROGRAMS

Ms. WILL. I am pleased to have the opportunity to appear before the Subcommittee on Select Education to discuss current and evolving efforts of the Office of Special Education Programs to effectively monitor the implementation of Public Law 94-142, the Education for All Handicapped Children Act.

A year ago when I arrived in the Office of Special Education and Rehabilitative Services, I was asked to review the status of the monitoring system in the Office of Special Education and adopt a system which had been revised by OSEP. That system contained a philosophy of monitoring based on a number of important assumptions. These assumptions were:

First, that State educational agencies are primarily responsible for assuring that the requirements of Public Law 94-142 are carried out at the local level;

Second, that past monitoring efforts focused on assuring that basic procedural requirements under EHA, such as due process, were implemented by the States. The OSEP monitoring effort needed to focus on assuring quality educational outcomes for handicapped children as well as basic procedural requirements;

Third, that past monitoring efforts were not effectively using data available on State performance. If this data were used, problem areas could be determined before a monitoring visit and the focus of the visit could be more specific and effective;

Fourth, that in many cases, past monitoring efforts did not result in adequate followup and resolution of the problems and States did not receive adequate assistance in correcting problems.

Based on my belief that these assumptions were basically sound, I decided to adopt several initial changes proposed by OSEP in the way monitoring is conducted. These changes are now being integrated into the process. There are four major components to this revised monitoring process: presite screening; onsite monitoring visit; postvisit followup procedures, short- and long-term; and technical assistance.

Under presite screening, OSEP collects, reviews and analyzes all file materials pertaining to a State's implementation of 21 of the basic requirements of EHA-B. This material delineates implementation problem areas experienced by the State. Among the materials are State plan reviews, complaints received by OSEP from parents, advocate organizations, et cetera, and reports of investigations conducted by the Department's Office of Civil Rights.

The substance of this review is then incorporated in a premonitoring document. This document is submitted to the State Educational Agency in advance of the visit. Parent, advocate information requested from selected representatives within the State is also reviewed prior to the visit. OSEP also specifies, prior to the visit, the types and amounts of additional information needed from the State, as well as the specific requirements to be monitored.

For the onsite monitoring visit, a team generally composed of two to five OSEP staff conducts an onsite review lasting one week in the SEA. The onsite review focuses specifically on monitoring those Federal requirements for which the SEA has direct implementation responsibility. During the visit, team members may also visit State-operated and State-supported programs and a sampling of local education agencies or individual schools.

State-operated programs under Public Law 89-313 have been targeted this year for the first time since 1980. The interview and fact-finding sessions focus on the requirements for which the SEA has direct responsibility, plus those areas in which the presite screening indicated specific problems. These areas include: General supervision; monitoring and correcting deficiencies; complaint resolution; review of hearings by SEA; approval of local applications; administration of State-operated or supported programs; State advisory panel; comprehensive system of personnel development; administration of funding by the SEA; administration of other programs and pre-school incentive grants.

A public meeting for parent, advocates and professionals representing statewide groups is scheduled as part of the onsite review process. In this meeting, input from the parents, advocates and statewide group representatives helps determine problems the State is having implementing EHA.

At the end of the visit, the team conducts an exit interview to alert the chief State school officer and his or her staff about the initial assessment of areas of commendation, recommendation and concern.

Under the postvisit followup procedures, upon completion of the site visit, OSEP staff analyzes the data and information collected, requests additional data from the SEA as necessary, and integrates all available data. A program review letter [PRL] incorporating the specific findings of the program review lists commendations—noteworthy activities—recommendations—suggestions for enhancing SEA administration of Public Law 94-142—and concerns—inconsistencies with Federal requirements.

The PRL sent to the State calls for a formal acceptance of individual findings or a request for additional negotiations. If the State elects not to appeal our findings, the State is required to submit a voluntary implementation plan. The plan must be submitted to OSEP within 30 days and should include the specific actions to be taken by the SEA for each area of concern. The SEA's timetable for completing each action, a description of the information to be submitted to OSEP to document the completion of each major activity, and if appropriate, any legal barriers which the State may have to overcome in order to implement its plan.

Under the current plan, OSEP intends to conduct onsite reviews for each State once every 3 years. Decisions to monitor onsite more often than once every 3 years are based on an analysis of the State's previous and current implementation of Public Law 94-142 and State plan requirements.

For example, this year, OSEP plans to conduct two onsite visits to the State of California because of the complexity and scope of issues which need to be addressed. We are also considering two visits to Illinois this year.

The process of corrective action to improve State implementation of EHA does not end with a program review letter and submission of a voluntary implementation plan to OSEP. The final component to the entire OSEP monitoring effort is the provision of longer term technical assistance to States to assure that problem areas are adequately corrected.

Technical assistance by OSEP is provided through two mechanisms. First, a newly created unit within OSEP has been assigned the role of reviewing the results of monitoring, categorizing persistent problem areas and developing a technical assistance plan for

OSEP to provide overall direction in the improvement of State agency performance.

Second, OSEP has developed a network of regional resource centers which are capable of providing extensive consultation to State agencies in solving problems of implementation. There are currently six such centers with funding in excess of $4 million. The assistance provided by the RRC helps to ensure quality outcomes, as well as the implementation of basic procedural safeguards.

In one State, for example, the SEA's compliance monitoring efforts were found to provide only limited information on program performance at the LEA level. The RRC intervened and assisted Idaho in identifying methods for evaluating quality and developing an acceptable model.

In another, the State was found to need to develop guidelines for placement of students in the least restrictive environment. The RRC is providing that State with technical assistance in looking at national best-practice models for the development of such guidelines.

Those are just two examples of the kind of technical assistance that can be provided. I would like to submit a lengthier list for the record if I might.

Mr. MURPHY. Thank you.

Ms. WILL. The OSEP monitoring system I have described is managed solely by OSEP staff. However, monitoring of EHA-B is not done solely by OSEP. Additional resources are available and used. Among these are audits by Federal and State audit agencies, Inspector General investigations and OCR monitoring of section 504 complaints.

On this latter point, in 1980, OCR and OSEP entered into an agreement to coordinate with and assist each other in the enforcement of the parallel provisions of Public Law 94-142 and section 504. The MOU calls for: The joint investigation and resolution of complaints; the conduct of joint monitoring visits; the sharing of data; the coordination of policy; and the joint provision of technical assistance.

Currently, OCR and OSEP are jointly reviewing the implementation status of the MOU to determine what parts of the agreement are working effectively and to act jointly to improve implementation of the MOU in areas where coordination of monitoring and compliance activities is essential.

Activities under the MOU being looked at are: First, the referral to OCR by OSEP of complaints received by OSEP involving section 504 violations. Some 150 complaints have been referred to OCR since 1980 for OCR investigation and resolution;

Second, the joint review and resolution of compliance violations uncovered by the respective offices;

Third, the joint review and coordination of policy issuances promulgated by the respective offices;

Fourth, data sharing;

Fifth, cooperative technical assistance activities. Possible use of OSEP's regional resource center mechanism is being discussed; and

Sixth, the assistance of OCR in the OSEP State plan review process.

The review of these activities is well underway and both offices fully intend to improve the effectiveness of their compliance monitoring through mutual cooperation and coordination of activities.

Recent OSEP accomplishments in the monitoring of State educational agencies' implementation of the law have been impressive. Over the past 18 months, the staff of the Division of Assistance to States [DAS] has completed a substantive review of each of the State plans submitted by the 57 States and territories. In addition, the DAS staff will have conducted onsite program reviews of 16 States by the end of fiscal year 1984. OSEP is currently planning on-site monitoring visits to an additional 19 States during fiscal year 1985.

The efforts by OSEP to monitor the discretionary programs for training, research, media and model program development reflect the same commitment to comprehensiveness, efficiency and flexibility evident in the State grant program review process. In addition to the option of performing selected onsite evaluation visits, the discretionary monitoring system employs numerous substantive monitoring designs, including: offsite monitoring; individual project performance report reviews; evaluation of continuing application content; and the inspection of final grant and contract reports.

Some details of these monitoring techniques follow:

Telephone monitoring is an effective method since a large number of contractors and direct grantees can be the subject of review. Each division in OSEP has instituted various telephone monitoring procedures to meet specific needs: upcoming deliverables; project activities; changes in budget; and time lines are some of the items discussed during monitoring.

Financial progress reports are reviewed and any major questions the project officer may have regarding procedures or time lines are sent in writing to the project director. If adequate progress is not being made, the project officer may meet with the contractor and request some adjustments.

The project officer routinely reviews the expenditure reports submitted to determine whether costs are approximately the same as the approved budget and whether the costs billed are consistent with the work carried out.

A site visit by one or more OSEP staff members may be made to the contractor or grantee's institution to monitor project programming or management activities. The purpose of site visits is to verify that the project is being appropriately implemented in the manner agreed to in the contract or grant.

The visits also determine whether any changes should be made or whether technical assistance should be provided to improve the quality and efficiency of the project.

When OSEP conducts site visits to funded institutions, an attempt is made to visit all projects funded by OSEP at that institution. For example, when the Universities of Kansas, Maryland, Washington, and Utah State were visited, more than 65 contracts and grants were monitored.

This completes my description of the OSEP monitoring systems and procedures. Many of the processes which I have outlined are new. I am just now beginning to receive information on how these processes are working. I realize that the present system is not perfect and I am committed to the development of a stronger and more effective monitor system.

If you will permit me, there are a few additional observations I would like to leave. The State monitoring system have been evolving since 1976. At first, I think it was very necessary to have a Federal presence in each State regularly to spur compliance with the new law. Large numbers of children were unserved and without IEP's.

Much technical assistance was needed. Monitoring was essentially technical assistance based. In 1979, there was a report issued supported by a large number of advocacy organizations which found fault with the monitoring system which existed in 1979 as having not an adequate data base, not adequate targeting and not adequate followup.

Since that time, there has been a determined attempt on the part of the Office of Special Education to improve its monitoring system. I think that as a result, we see a new generation of issues, compliance issues, having to be addressed. We are beyond merely the simple implementation plan.

I would like to outline some of the deficiencies that I found when I arrived in the Office of Special Education.

I thought that the concept of monitoring was ill defined. There was a—basic components seemed to be to show the Federal presence, to praise what is being—what was being done well, to offer technical assistance and to show concern over areas of noncompliance. I thought that the documentation was insufficient and particularly felt that followup was lacking.

Program review letters had sometimes not gone out for a year. Voluntary implementation plans sometimes were submitted and sometimes were not. There was no review to determine if voluntary implementation actions had been carried out and I thought the staff needed more training in data gathering to document noncompliance.

Since I have identified these problems, I have asked the staff to recommend to me changes for further improvements and refinements in the monitoring system. These are some of the corrective actions that are underway:

The development of a model investigative plan, which includes the description of data which substantiates noncompliance; the development of criteria for selection; targeting of monitoring sites; services of consultants to develop systems and to train personnel. In fact, we are going to ask an independent contractor to evaluate our monitoring system.

I want better integration of the State plan review process and the monitoring system, the offsite and onsite monitoring techniques. I want explicit standards for monitoring developed in areas such as general supervision, procedural safeguards and LRE.

We are considering the possibility of using an exchange mechanism between our Federal staff and State and local agency staff. We want more consumer imput. I mentioned staff training. In addition to that, we are going to train SEA staff who are involved in monitoring the local education agencies; add legal expertise and perhaps a statistician or two to help us in the data analysis; and develop better timetables for followup activities and for the regular and targeted monitoring of discretionary programs.

That is sort of a hasty overview of the things that we are doing. I have one additional comment which is somewhat unfortunate that, very unfortunate that we won't be able to look at the rehabilitation system because, as I looked at the monitoring system which existed in OSERS, I felt more and more that there was a need to bring together the monitoring of both systems, and ultimately what I would like to do is to produce a plan for OSERS monitoring, not that we want to violate the integrity of each system, but I find that, for example, in the rehabilitation system where the monitoring is conducted largely at the regional level, there is enormous expertise which could be brought to bear in terms of the site visits at the SEA level and the LEA levels. So we are considering the possibility of training some of our regional office staff on the rehab side to become more knowledgeable about special education and Public Law 94-142.

Thank you.

[Prepared statement of Madeleine Will follows:]

Prepared Statement of Madeleine C. Will, Assistant Secretary for Special Education and Rehabilitative Services, Department of Education

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before the Subcommittee on Select Education to discuss the monitoring activities of the Rehabilitative Services Administration. The purpose of RSA monitoring is not only to assure compliance with the Rehabilitation Act of 1973, but to also assure the delivery of quality services under that Act.

RSA monitoring activities differ on two points from the monitoring activities of the Office of Special Education Programs (OSEP). Under OSEP a strong emphasis is placed on assuring that State agencies carry out their legal responsiblity to monitor the delivery of services by local education agencies. Under OSEP, the LEA's are the primary service providers. In contract, RSA directly monitors the delivery of services by the State agency. Under RSA, the SEA is the primary service provider.

On the second point, it is important to remember that P.L. 94-142 prescribes both rights to specific services for all handicapped children and procedures for obtaining these rights. Therefore, OSEP's monitoring emphasizes assuring that these rights and procedures are protected and adhered to by the States and local education agencies and that mandated services are available to all handicapped children. Monitoring of State Rehabilitation agencies, by contrast, places more emphasis on performance outcomes; i.e., how effectively services are being delivered in relation to achieving rehabilitation goals. This focus is more prominent in RSA monitoring objectives since there are fewer procedural requirements under the Rehabilitation Act and not every handicapped person is eligible for services. This emphasis doesn't imply, however, that legal and procedural requirements of the Rehabilitation Act are not monitored. On the contrary, assuring that legal and procedural requirements are adhered to is certainly important in the RSA monitoring system I will describe.

As stated, the purpose of program monitoring in RSA is to assure compliance and promote quality services. Monitoring is conducted largely by staff in the Department's ten Regional Offices. The focus of RSA monitoring activity is directed by regional and central (Washington) office annual work plans. Potential problem areas and areas needing improvement are identified from several sources, including required program reports and financial data submitted by State agencies. Audits result in data which indicate needs for monitoring activities. Reports from Client Assistance agencies review problems that may require investigation. Evaluation studies uncover specific deficiency trends across State programs. Administration and Congressional concerns also guide monitoring activities, such as activities to improve services to serverly disabled individuals, to protect client's rights, and to improve job placement activities and State program management.

Monitoring RSA is greatly enhanced by our technical assistance efforts to improve State agency management. These efforts promote mutually acceptable standards, expectations, and terminology. They have included a project supported by NIHR to provide a results-oriented management system to State agencies. Upon completion of the research and development phase of this project, RSA and NIHR jointly funded the implementation phase in order to reap the benefits of the investment and meet State requests for further assistance. In a related program management effort, NIHR has established a Research and Training Center with an assigned core area of program management.

In other projects funded by RSA, specific monitoring tools have been developed to assist RSA in the conduct of monitoring activities. For example, a case review instrument to review rehabilitation counselor performance was designed to examine counselor compliance with RSA case management requirements.

The efforts of RSA to monitor compliance and assure the delivery of quality services can be categorized under four distinct activities. These are:

1. Program Management Reviews; 2. Financial Management Reviews; 3. Program Data Analysis; and 4. Audits.

PROGRAM MANAGEMENT REVIEWS

Program Management Reviews are conducted primarily by regional office staff. They involve the review of program activities under RSA state and discretionary grants to determine the following:

1. Compliance with the award of funds as it relates to law, regulations, policies, and plans/applications;
2. Progress toward a satisfactory level of effort in meeting the objectives established in the plan or application for which an award has been made;
3. Need for technical assistance and;
4. Exemplary practices in program or management that may be suitable for dissemination.

Regional staff use various techniques to fulfill their program monitoring responsibilities. They include:

1. Review of State plans, State statutes and policies, and performance reports; 2. correspondence; 3. Telephone calls; 4. Personal contacts; and 5. Site visits.

There are two important monitoring instruments that are used in the rehabilitation community and by the Regional Offices in collecting and organizing performance information concerning the Basic State Grant program: the case review schedule and the State agency management review.

Each Regional Office annually includes in its work schedule plans to review selected State Agencies to look at the vocational Rehabilitation casework process and the administration of the Basic State Grant program using one or both of the instruments mentioned. Such reviews result in a monitoring report to each State agency. The State agencies are asked to develop a corrective action plan. A follow-up review is accomplished a year later by RSA.

In the area of discretionary grants RSA will be funding approximately 500 discretionary projects in FY 1984 at a budget level of $79 million.

Under the terms of these grant awards substantial involvement of RSA with the grantee is limited. After a competitive award has been made by the Washington Office, the responsibility for program and fiscal monitoring of projects is transferred to the Regional Offices. The Washington Office, however, retains monitoring responsibility for projects of national scope such as training prosthetics and orthatics.

Monitoring activities include review of performance and expenditure reports, project correspondence, telephone calls, personal contacts, and site visits. RSA conducts formal site visits to a sample of ongoing projects each year, and to those projects which are encountering special problems.

The discretionary grants awarded by RSA are also monitored by the Regional Offices. Reviews have been completed on grants under the following programs: Migrant workers, client assistance, independent living, training, projects with industry, and special service projects.

FINANCIAL MANAGEMENT REVIEW

The Management Services Staff in the Washington Office is charged with performing several monitoring activities. For example, the staff:

1. Assures the proper allocation of appropriated funds against statutory requirements and Departmental policy.
2. Assures, through the review of expenditure reports, the appropriate expenditure of funds in accordance with policies established by OMB and the Department.

More specifically, fiscal monitoring of the Basic State Grants program is accomplished by reviewing financial data submitted by State Vocational Rehabilitation (VR) agencies.

Financial Status Reports (SF-269) are reviewed and monitored on a regular basis to determine if all of a State's Federal allotment will be used. State agencies are required to notify RSA of unusable funds so that these funds may be reassigned to other States. At the end of each fiscal year, Final Funds Reports are reviewed to determine if State matching funds have been provided, the amount of excess State funds contributed, and the amount of Federal funds lapsing. RSA staff work with State VR agencies to determine why funds are lapsed and to develop strategies to prevent recurrence. On-site monitoring is done in those cases requiring in-depth analysis.

PROGRAM DATA ANALYSIS

Statistical information collected by RSA from the States is used primarily for the monitoring of program performance to assure the adequate delivery of services to target populations.

Monitoring entails the review of reported data for completeness and accuracy. A computer editing system is in place to check every applicable item of information reported. Data is then used to establish comparisons between States as to how services are being delivered in the Federal-State Rehabilitation System. Examples of these comparisons are the varying trends in case closures and the delivery of specific therapies. Examples of data which are routinely reviewed are:

1. The flow of cases into and out of each State rehabilitation agency.
2. The personal and program-related characteristics of individual clients.
3. Reported client outcomes.

Based on the data review the progress of State agencies toward achieving establishing service delivery objectives is determined. For example, analyses have identified agencies that serve largely clients with relatively minor as opposed to severe handicaps. Data analyses has also pointed to problems such as high percentages of clients being rehabilitated into non-remunerative occupations, e.g. homemaking.

RSA follows up identified problems and trends by way of an Information Memorandum to the State Directors. Work plans are then developed by the States to correct program deficiencies.

AUDITS

Audits are conducted by the Office of the Inspector General. In accordance with OMB Circular A-102P, audits must also be provided by each agency (State) at least every two years. The audit findings are provided to RSA for corrective action and collection of disavowed expenditures. Final Letters of Determination are issued within 180 days of the audit report. Within six months after an audit report is submitted to the State, a site visit is made to the grantee to determine if the planned corrective actions have been implemented or if the deficiencies have been corrected. A fiscal year summary analysis is made of all audits issued during the year showing findings, funding paybacks, and dates audits were issued and resolved.

In summary, RSA maintains a comprehensive and structured monitoring process to improve program effectiveness, assure compliance, and promote quality services to handicapped people. This is done through a system that involves a number of monitoring activities and techniques. The result of these efforts is better services to handicapped individuals.

Thank you, Mr. Chairman. I am prepared to respond to questions you, or other members of the Committee, may have.

Mr. MURPHY. Thank you, Mrs. Will. I think that those innovations that you summarized will certainly promise to make a great stride in the monitoring of what we all believe is a very worthwhile program.

I also want to thank you for the timeliness of the EHA regulations, as well as your efforts to brief our subcommittee staff and other member's staffs on the status of current regulations.

I will first ask my colleagues if they have any questions. Mr. Bartlett.

Mr. BARTLETT. Yes, Mr. Chairman, I have a number of questions. I am sitting here—as impressive as Mrs. Will's accomplishments in the 14 months have been, I have to confess to being even more impressed by her long list and review of those accomplishments.

Much of what you have implemented and are implementing, I think many of us were not even aware of and so, for that, I congratulate and appreciate it.

From listening to your testimony, both your written testimony and what you gave us at the end, it sounds—I draw two conclusions: First, and I wonder if you could share for us with any quantitative or just judgmental way—it sounds as if you have vastly improved the monitoring system since 1983, and indeed, in reviewing the testimony of Mr. Gerry as to what it looked like in 1979-80, it sounds as if you have vastly improved the effectiveness of that monitoring system since 1979-80 also.

Do you have any way of quantifying those improvements in terms of results in the field, or do you have a subjective judgment as far as how far along on the improvement process are we?

Ms. WILL. I think we are making enormous strides. The States are making enormous strides. I can cite, by way of example, the development of policies, regulations, and statutes at the State level to improve the effectiveness of educational services; the elimination of waiting lists; the provision of related services to large numbers of children; and, the development of extended school year programs.

Mr. BARTLETT. Would you describe—how would you characterize it? You have made vast improvements since 1983 and also since 1979-80; that we are three-quarters of the way there, halfway there, to where you want to be?

Ms. WILL. Well, I don't think that I would feel comfortable trying to quantify it. I think we have one impressive source of information in the most recent deregulatory efforts in 1983. From reviewing all that information, which consists of letters and reports submitted to the Department, and I would imagine that the same sort of information was conveyed to Congress, the general consensus was that Public Law 94-142 was an extraordinarily effective statute. It was a healthy program.

In addition, Congressman Murphy established a Commission to study the financing of free appropriate education, made up of a distinguished variety of representatives from the educational community, including people from the Council for Exceptional Children, for example, which has reported that Congress should preserve the Public Law 94-142 statute without change because it is based on sound equity principles and is working well to ensure free, appropriate public education for all handicapped school-age children.

In addition, the report went on to say that although the Commission recognizes that in many States the impetus for these efforts has come from within the State, it believes that such activities have been greatly strengthened by the passage and ongoing enforcement of Public Law 94-142. I particularly like this statement and highlight it because I think it demonstrates the vitality of the act, the partnership, the large role that States play in the administration of the educational services delivered to handicapped children.

This is not to say that you can equate directly the effectiveness of our monitoring system, but I think it is——

Mr. BARTLETT. It is a part.

Let me followup on that a bit because in listening to your testimony and comparing that with some of the testimony earlier, it occurred to me that you are—in very specific ways, that you are implementing—have implemented and have specific plans to implement some of the very specific recommendations that were made to us by several witnesses, including your emphasizing of data collection, your emphasizing of followup, which is of far more enormous importance than anything else, following up to make sure that the recommendations are carried out, your emphasizing of technical assistance. You have adopted an outside monitor of your own monitor, you just told us, which is one of the specific recommendations.

You are including periodic onsite reviews on the 3-year schedule, combined with the continuous review process, so essentially you are telling us that you have done both.

I suppose my question is, of the several groups recommended—and I didn't get a count of—Dr. Weintraub represented the Assocation for Children and Adults with Learning Disabilities, the Association for Retarded Citizens, the Council for Exceptional Children and others, of which you communicate with frequently and I do also. I suppose I am struck by the fact that they were making recommendations that you are implementing. Did they know that or have you talked with the organizations about those specific implementations or recommendations?

Ms. **Will**. Not formally. We are still in the process of finalizing a plan. It really is not complete. It wasn't complete a month ago. It will take another month or so before we are ready to talk about it in detail.

I think that there may have been some specific recommendations discussed with individuals in a private meetings.

Mr. **Bartlett**. So they should—the people who made these recommendations should feel good about the hearing because then you have come in and told us that in large part you are implementing many of those recommendations.

Ms. **Will**. We are always eager to receive ideas from advocates who represent them.

Mr. **Bartlett**. Thank you, Madam Secretary.

Mr. **Murphy**. Mr. McCain.

Mr. **McCain**. Thank you, Mr. Chairman.

I notice that we have a vote and I want to apologize to the witness for not being here for your entire testimony.

Mr. Gerry identified in his statements that he felt the largest area of concern right now was lack of followup and he defined that as being: Are the programs being carried out and do they do any good?

Do you share Mr. Gerry's concern, and if so, could you briefly, understanding time constraints——

Ms. **Will**. Yes, I do. I think that there has been in the past a lack of followup and what we are determined to do, and are doing, I think, much better, is to track adequately responses that we should deliver to the States and to which we expect return, to provide on a timely basis and to provide technical assistance to States in improving the overall educational services and in the development of policy and procedures to meet the requirements of the act.

These regional resource centers which have an appropriation of $4 million are going to be used to target specific areas of concern, compliance concerns, for example. A significant number of States have asked for technical assistance in building their monitoring capabilities. We want to do that.

Another area of concern was that of procedural safeguards and a third was least-restrictive-environment options—models; knowledge about exemplarly practices in the area of least-restrictive environment. Those are sorts of things that we would like to assist the States with.

Mr. McCain. Thank you. How many people do you have on your staff, Ms. Wills, total?

Ms. Will. 452.

Mr. McCain. Do you believe——

Ms. Will. That is in the Office of Special Education and Rehabilitative Services.

Mr. McCain. Do you believe that you need an increase?

Ms. Will. I think that I have adequate resources and I would like to focus primarily on the staffing of the Division of Assistance to States, which does a good deal of monitoring. We have people who are team leaders that go out and they are responsible for organizing material and identifying problems that may be looked at. The number of the team leaders is nine and I think sometimes there is confusion. People equate our monitoring staff to those nine, but it is much larger than that. In addition, we have other members of the team, the people who provide technical assistance. I think that we have adequate resources at this point.

We have enormous flexibility. Our S&E provisions allow us to shift personnel from one division to another. We have considered increasing the size of the technical assistance unit, for example, and I had mentioned earlier the use of our Federal staff at the regional office level would also be a possibility.

Mr. Bartlett. Would the gentleman yield?

Mr. McCain. Yes.

Mr. Bartlett. The question—and I think it is important—we know that you have more than nine people monitoring. Would you have an estimate as to how many people in your department are involved with monitoring activities? I think that was Mr. McCain's——

Ms. Will. Forty-two.

Mr. Bartlett. Forty-two all together. Thank you.

Ms. Will. We have a number of vacancies. We filled two and we have recruitment actions in for an additional five.

Mr. McCain. Finally, Mrs. Will, one of the things that struck me about our hearing was the statement that 12 States have not been visited for 4 years. I am of the belief that Mr. Gerry's thesis that you don't need to show the flag after a while with great frequency I certainly agree with. But I also think that to go that long without visiting States the size of Texas is probably something that needs to be rectified and I would recommend that you make a few more visits to these States.

Ms. Will. Actually that is an erroneous fact. There are four States, only four States, that have not been monitored for 4 years, and they are the first set of States to be monitored in 1985.

Mr. McCain. I am glad you brought that to our attention and I appreciate it. Thank you.

Thank you, Mr. Chairman.

Mr. Murphy. Thank you, gentlemen.

I want to thank you, Mrs. Will. I have a series of questions, but obviously I would have to keep you here for one-half hour until we get back and I will not do that to you. You have been extremely cooperative.

I want to welcome Ms. Cullar to Washington in her new duties and we look forward to working with her.

I would like to submit to you, Ms. Will, a list of questions on staffing and some other things if you would be so good as to submit them back in writing or contact the staff and get them to us, we can all save some time.

I just have one question that is not related to this. I recently was visiting a sheltered workshop in one of the Western States and they expressed to me their concern of your views on the use of sheltered workshops, saying that they had the impression that you were not as keen on sheltered workshops as perhaps they were. Could you give me your——

Ms. Will. Yes, I would be happy to. I feel that sheltered workshops are, and have been, a cornerstone in the system, the delivery system, of services to adult handicapped people who are severely and profoundly handicapped. Without sheltered workshops, vast numbers of young people would graduate from high school and have absolutely no service, no next step. Having said that, I think that the emphasis that I placed in OSERS in the area of services for adults has been to focus on competitive employment and supportive——

Mr. Murphy. Sometimes it doesn't exist, competitive employment.

Ms. Will. That is true, but we know that there are models out there of success and we are trying to replicate them and we have a special appropriation approved this year to develop supported work programs which will allow severely handicapped people to function in a competitive situation, a competitive setting.

I know from my experience as a parent that there are some real problems that sheltered workshop operators face in having to convince a generation of parents, an older generation of parents, that were told that their young person could never function independently in a competitive setting and have always had that expectation.

By contrast, you have an entirely new generation of parents who have grown up under Public Law 94-142 who feel very strongly and have been led to believe and even have every expectation that their young person will be able to function competitively, so I think that our focus now is to develop a range of options and we are not critical of sheltered workshops——

Mr. Murphy. Can't do without them until we get them all fully competitive.

Ms. Will. An invaluable service.

Mr. Murphy. OK. Thank you very much, Ms. Will.

[Whereupon, at 12:20 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

U.S. Department of Education, Office of the Assistant Secretary
for Special Education and Rehabilitation Services,
Washington, DC, July 27, 1984.

Hon. Austin J. Murphy,
Chairman, Subcommittee on Select Education, House Office Building Annex 1, Washington, DC.

Dear Mr. Chairman: Enclosed are the materials you requested regarding OSERS front office travel for the upcoming hearing on August 1, 1984.

The Assistant Secretary has the discretion to invite experts from the field to participate in meetings convened in support of her initiatives and priorities. This "invitational travel" is included in our response as the funds are charged to the account of the immediate office of the Assistant Secretary.

Please do not hesitate to contact me if you need additional information.

Sincerely,

Madeleine Will.

Attachments (2).

IMMEDIATE OFFICE

Traveler	Purpose	Cost
Fiscal year 1984 travel:		
Carol Inman	LD workshop	$100
Madeleine Will	Transition speech	408
Carol Inman	LD initiative	115
Joan Standlee	Mental def. plenary session	408
Paul Riddle	Monitoring: Buck Falls, PA	158
Joan Standlee	Const. group meeting, Texas	865
Madeleine Will	AAMD speech	408
Carol Inman	SEA leadership meeting	975
Joan Standlee	SE and VN speech	273
Madeleine Will	Hahnem Ann Univ. speech	178
Joan Standlee	Spina bifida speech	1,234
Carol Inman	Parent training speech	965
Do	Young adult workshop	171
Tom Bellamy	Transition speech	376
Madeleine Will	Site visit/Clarke School for the Deaf	331
Tom Nerney	Development dis. meeting	616
Madeleine Will	NISH speech	445
Carol Inman	Parent groups	518
Bob Walling	Baltimore SSA	33
Joan Standlee	LD speech	494
Madeleine Will	Review employ. program	597
Do	Site visit/Woodrow Wilson Rehab Center	106
Carol Inman	Regional workshop	647
Do	Exceptional parents meeting	583
Do	Panel presentor	184
Tom Nerney	Speech	516
Do	Panel moderator ASH	558
Madeleine Will	Speech: NASDE	1,178
Ellen Cramer	Health care financing meeting	104
Carol Inman	Parent training conference	421
Do	NASDE: Panel presentor	964
Joan Standlee	OED/Advisory Committee	1,281
Ed Sontag	Site visits: Wisconsin	2,000
Total		[1] 18,210
Fiscal year 1983 travel:		
Rapheal Simches	State directors/spec. ED	582
Helga Roth	Rehab International	381
Carol Inman	Autistic child workshop	538
Tom Nerney	Speech: Rehab leaders	299
Do	Handicapped disc. meeting	396

IMMEDIATE OFFICE—Continued

Traveler	Purpose	Cost
Wallace Babington	Oral interpreting workshop	828
Do	Deaf interpreters conference	1,000
Dave Rostetter	94-142 meeting	44
Tom Nerney	Prog. directors meeting	201
Rapheal Simches	Vocational educ. conference	506
Slagle Allbritton	CCSO/CEIS	499
Rapheal Simches	Rural spec. educ. conference	461
Don Barrett	CEC	306
Darld Long	NH special education	382
George Conn	Paralympics meeting	830
Madeleine Will	Site visit/New York	167
Ed Sontag	do	167
Madeleine Will	ATBCB	160
Tom Nerney	do	160
Madeleine Will	Boston site visits	193
Dave Rostetter	Monitoring: Columbus, Ohio	337
Winston Wilkinson	Public Law 94-142 meeting	618
George Conn	Regions meetings	1,692
Herman Goldberg	AASA speech	560
George Conn	Job placement conference	1,160
Winston Wilkinson	Black colleges meeting	447
Herman Goldberg	Pennsylvania spec. educ.	225
Helga Roth	Information sciences	533
Rapheal Simches	Public Law 94-142 speech	366
Do	NASDE presentation	456
Herman Goldberg	Public Law 94-142 presentation	178
Winston Wilkinson	Public Law 94-142 meeting	515
Total		15,187

[1] As of June 30, 1984.

Note: Invitational travel—includes initiatives of the Assistant Secretary, i.e., supported employment, community-based services, independent living, handicapped civil rights, transition and early intervention.

REHABILITATION SERVICES ADMINISTRATION—SALARIES AND EXPENSES BUDGET AND TRAVEL BUDGET

	[1] 1979	1981	1984
Total, salaries and expenses (thousands)	$11,932.6	$10,366.7	$10,696.2
Travel (thousands)	550.0	362.9	127.3

[1] In 1980 RSA was moved to the new Department of Education and became part of the Office of Special Education and Rehabilitation Services.

Note: Between 1979 and 1984, salaries and expenses budget decreased 13 percent; travel budget decreased 77 percent between 1981 and 1984 salaries and expenses budget increased 3 percent; Travel budget decreased 65 percent.

REHABILITATION SERVICES ADMINISTRATION—PERSONNEL

	1980 (prior to move to OSERS)	1980 (after move to OSERS)	1984
Headquarters	206	140	110
Regional	162	162	124
Total	368	302	234

Note: Between 1980 and 1984, prior to move to OSERS: Headquarters staff decreased 46.6 percent; regional staff decreased 23.5 percent; total staff decreased 36.4 percent. Between 1980 and 1984, after move to OSERS: Headquarters staff decreased 21 percent; regional staff decreased 23.5 percent; total staff decreased 22.5 percent.

RSA RESPONSE TO REQUESTS FROM STATE REHABILITATION AGENCIES FOR PROGRAMMATIC CONSULTATION AND TECHNICAL ASSISTANCE: SPOT SURVEY OF A MAJORITY OF STATE AGENCIES (32 AGENCIES SURVEYED)

QUESTIONS ON SEEKING ASSISTANCE FROM NATIONAL RSA OFFICE

Has you agency sought such assistance in the past year? 37.5 percent yes; 53 percent no; 9.4 percent no response.

Were you able to receive the requested assistance? 83 percent yes; 17 percent no.

Comments: "When you expect little, you ask for little, you get little". . . . "The questions asked were simple". . . . "Many times we have found it easier and quicker to get help through CSAVR" (Council of State Administrators of Vocational Rehabilitation).

QUESTIONS ON SEEKING ASSISTANCE FROM REGIONAL RSA OFFICES

Has your agency sought such assistance in the past year? 94 percent yes; 6 percent no.

Were you able to receive the requested assistance? 63 percent yes; 37 percent only partial or no assistance.

Was the assistance provided through a visit to your agency? 23 percent yes; 37 percent sometimes or seldom; 40 percent no.

Would it have been better provided by a visit? 63 percent yes; 13 percent not necessarily; 23 percent no response.

If a reason was given for your receiving only partial or no response, what was the reason provided? 100 percent lack of travel funds.

Comments: Requested that regional representative be allowed to travel to state to provide his expertise while our administrative review team did an internal audit pursuant to the development of a new case review process. Regional rep was denied permission to travel;

New state agency for blind has critical need for education in management of program . . . Has had one visit from regional office, from a junior staff member;

We have had problems receiving timely assistance from our regional office. Meetings were scheduled and canceled at last minute with excuse that travel budget had not been approved;

We have made no formal requests for technical assistance from regional office due to knowledge of their travel funds;

Visits are more valuable than communication by phone or mail . . . Provide opportunity to share visibly some of what we are doing as well as provide a sounding board for new ideas;

Have requested consulting and technical assistance on: order of selection, establishment grants, fee setting, client assistance, independent living, placement/marketing. On the whole, the regional office has demonstrated a sincere willingness to provide assistance. Failure to visit is not because of unwillingness, but due to other constraints that make travel impossible;

Timely and valuable visits in the past covered many of the items now covered only by mail and telephone;

From a state director's point of view, the regional staff's value is in the field—where the action is—not in the regional office;

State Agency Management Review—monitoring all aspects of agency management, including case management and review of files—normally has three regional office staff—fiscal, programmatic and specialist. This year we were told "We only have money for one person." Resulted is only a paper review;

Meetings always scheduled in the regional office prevents many state agency people from attending and prevents the sharing of valuable information;

Regional office staff development specialist has not been authorized to attend any of the bi-annual meetings of the RSA funded in-service Placement Training Project for three regions. Since RSA has had a national initiative on Job Placement, it would appear that regional training efforts could be better coordinated with states if RSA Regional office staff development specialists could be part of the planning and evaluation group;

It seems that the answer/decision to many questions can only be obtained at the national level. Often the regional office must check with the national office before an answer can be given. Authority/responsibility needs to be fixed at one level. In a couple of cases, projects have been given information and decisions without consultations with state vr. This has created many communication and expectation problems.

OSERS Headquarters Travel Expenditures

FISCAL YEAR 1984 TRAVEL—TOTAL: $18,210 AS OF JUNE 30, 1984

Carol Inman: $5,643 total—LD Workshop $100; LD Initiative, $115; SEA Leadership Meeting, $975; Parent Training Speech, $965; Young Adult Workshop, $171; Parent Groups, $518; Regional Workshop, $647; Exceptional Parents Meeting, $583; Panel Presentor; $184; Parent Training Conference, $421; NASDE: Panel Presentor; $964.

Joan Standlee: $4,555 total—Mental Def. Plenary Session, $408; Const. group meeting, TX, $865; S.E. and V.N. Speech, $273; Spina Bifida Speech, $1,234; L.D. Speech, $494; OED/Advisory Committee, $1,281.

Madeleine Will: $3,651 total—Transition Speech, $408; AAMD Speech, $408; Hahnem Ann Univ. Speech, $178; Site Visit/Clarke Sch. for Deaf, $331; NISH Speech, $445; Review Employ. Prog., $597; Site Visit/Woodrow Wilson Rehab. Center, $106; Speech: NASDE, $1,178.

Ed Sontag: $2,000 total—Site visits: Wisconsin, $2,000.

Tom Nerney: $1,690 total—Development Dis. Meeting, $616; Speech, $516; Panel Moderator A.S.H., $558.

Tom Bellamy: $376 total—Transition speech, $376.

Paul Riddle: $158 total—Monitoring: Buck Falls, PA, $158.

Ellen Cramer: $104 total—Health Care Financing Meeting, $104.

Bob Walling: $33 total—Baltimore SSA, $33.

FISCAL YEAR 1983 TRAVEL—TOTAL: $15,187

George Conn: $3,682 total—Paralympics Meeting, $839; Regions meetings, $1,692; Job Placement Conference, $1,160.

Rapheal Simches: $2,371 total—State Directors/Spec. Ed., $582; Vocational Ed. Conference, $506; Rural Spec. Ed. Conference, $461; P.L. 94-142 speech, $366; NASDE Presentation, $456.

Wallace Babington: $1,828 total—Oral Interpreting Workshop, $838; Deaf Interpreters Conference, $1,000.

Winston Wilkinson: $1,580 total—P.L. 94-142 meeting, $618; Black Colleges Meeting, $447; P.L. 94-142 meeting, $515.

Tom Nerney: $1,056 total—Speech: Rehab leaders, $299; Handicapped Disc. Meeting, $396; Prog. Directors Meeting, $201; ATBCB $160.

Herman Goldberg: $963 total—AASA Speech, $560; Pennsylvania Spec. Educ., $225; P.L. 94-142, $178.

Helga Roth: $914 total—Rehab International, $381; Information Sciences, $533.

Carol Inman: $538 total—Autistic Child Workshop, $538.

Slagle Allbritton: $499—CCSSO/CEIS, $499

Darld Long: $382—N.H. Special Education, $382.

Dave Rostetter: $381 total—P.L. 94-142 meeting, $44; Monitoring: Columbus, Ohio, $337.

Don Barrett: $306 total—CEC, $306.

Ed Sontag: $167 total—Site Visit, NY, $167.

COMMITTEE ON EDUCATION AND LABOR,
Washington, DC, November 14, 1984.

Mrs. MADELEINE WILL,
Assistant Secretary, Office of Special Education and Rehabilitation Services, Department of Education, Washington, D.C.

DEAR MRS. WILL: Thank you again for your participation in our Subcommittee oversight hearing on the monitoring activities of the Office of Special Education and Rehabilitation Services.

Enclosed you will find questions on special education which follow up on issues raised in the hearing and questions related to rehabilitation, which lack of time prevented us from discussing.

Since we would like to include this information in the printed hearing record, I would greatly appreciate having the responses no later than December 10.

Thank you for your assistance. It has been a pleasure to work with you during my chairmanship of the Subcommittee.

Very truly yours,

AUSTIN J. MURPHY, *Chairman.*

Enclosures.

QUESTIONS ON SPECIAL EDUCATION

What is the status of the independent contractor's evaluation of the monitoring system?

What additions have been made or plan to be made to the monitoring staffs in terms of increased legal expertise as well as statistical expertise?

What has been done to improve the timetable of Program Review Letters following monitoring episodes?

What is the status of communication between OSERS and OCR to improve the implementation of the MOU? What further action will be taken in this regard?

What criteria are used to determine whether a travel request is accepted? What priority is given to travel for purposes of monitoring as opposed to travel to participate in professional conferences in both the Office of Special Education Programs as well as OSERS front office?

What is OSERS position on the impact of the *Smith* v. *Robinson* decision? Does OSERS believe that parents or the legal representatives of handicapped children who prevail in litigation brought under the Education of the Handicapped Act should be allowed to recover reasonable attorney's fees?

QUESTIONS ON REHABILITATION

What is the formal division of responsibility between OSERS and RSA? Please describe the responsibilities of the Commissioner of RSA and the Assistant Secretary of the Office of Special Education and Rehabilitation Services with respect to the administration of federal vocational rehabilitation programs and projects.

Please describe the procedure used for the selection and approval of grants, including the procedure used to select reviewers for the peer review process. Once a grant has gone through the peer review process and been approved by the Commissioner of RSA, does anyone in OSERS have the authority to reduce the amount of that grant and reallocate the funds?

How many on-site case reviews, and with how many personnel, has RSA conducted in state agencies in each of the last four fiscal years? How many on-site management reviews has it conducted and with how many personnel in each of those years?

One of the primary responsibilities of the management services staff in RSA is to determine on a regular basis if all of a state's federal allotment is going to be matched so that it can be used. It appears that some state agencies, such as Puerto Rico, are being permitted to hold federal funds up to the last day of the fiscal year before returning unmatched funds. At the same time, there are may states overmatching their allotments and eagerly awaiting additional funds in order to serve additional clients. What strategies has RSA or OSERS developed to prevent recurrence of lapsed funds in Puerto Rico and the Territories? When was this problem last addressed in an on-site monitoring visit to Puerto Rico?

Between 1981 and 1983 the travel budgets for RSA regional offices were cut by 51 percent. In FY 1984, it appears that there was another reduction of about 40 percent. Who sets the allocation for the travel budget for RSA in the Department of Education? How was it determined that RSA would need less than it has actually *obligated* for travel in the past?

RSA regional offices are now required to submit quarterly travel plans and have them approved before they can undertake any on-site visits for monitoring and technical assistance. Is the responsibility for approving these plans OSERS' or RSA's? Who in OSERS or RSA routinely looks at travel plans before they are approved? Who has the final approval?

A recent survey of 32 state rehabilitation agencies showed that 30 states and requested consultation and/or technical assistance from regional or national RSA offices in the past year. Almost 40 percent stated that the assistance was not received or the assistance was inadequate. The vast majority stated that on-site assistance would have been more effective than the assistance they received. Since you note in the testimony provided to the Subcommittee that monitoring is greatly enhanced by technical assitance, what steps will you take to improve the provision of technical assitance from both regional and national offices that is requested by state agencies?

The Rehabilitation Act requires a report to Congress on activities carried out under the Act for each fiscal year. Although the report is due within 120 days of the beginning of each fiscal year, Congress has not yet received the report for fiscal year 1983. Please provide the Subcommittee with an explanation of this situation. When will the fiscal year 1983 report be sent to Congress? Will the report for fiscal year 1984 be provided to Congress prior to January 1, 1985, as is required by the statute?

Cost-effectiveness data on the federal rehabilitation program has not been provided for the last four years. Although states are individually assessing the cost-effectiveness of their programs, it is critical that the information be available on a national basis. Please provide the Subcommittee with the best available data showing the current cost-effectiveness of the federal program.

U.S. Department of Education, Office of the Assistant Secretary
for Special Education and Rehabilitative Services,
Washington, DC, January 23, 1985.

Hon. Austin J. Murphy,
Chairman, Subcommittee on Select Education, Committee on Education and Labor, U.S. House of Representatives, Washington, DC.

Dear Mr. Murphy: I am writing in response to your letter of November 14, 1984 regarding issues raised during the hearing conducted by the Subcommittee on Select Education. We have made significant progress in addressing many of the issues raised during the hearing and plan to continue our work to improve the administration of these programs.

Your questions are answered individually in the enclosed attachment to this letter. If you need additional information, please do not hesitate to contact me. I again want to thank you for the opportunity to testify before the Subcommittee and look forward to working with you in our mutual efforts to serve handicapped children and adults.

Sincerely,

Madeleine Will,
Assistant Secretary.

Enclosures.

QUESTIONS ON REHABILITATION SERVICES

Question: Please describe the procedure used for the selection and approval of grants, including the procedure used to select reviewers for the peer review process. Once a grant has gone through the peer review process and been approved by the Commissioner of RSA, does anyone in OSERS have the authority to reduce the amount of that grant and reallocate the funds.

Answer: All eligible applications for available new funds submitted in response to a Rehabilitation Services Administration (RSA) program announcement in the FEDERAL REGISTER are reviewed by a panel consisting of three reviewers, one of which must be a non-federal reviewer. In FY 1984, at least two of the reviewers on each panel were non-federal experts.

Nominations for new reviewers are obtained from solicited and unsolicited requests from the rehabilitation community, review of currently supported project personnel, and discussions between RSA and Special Education program staff, etc. The RSA projects officer responsible for each program provides initial nominations for reviewers in each category in which review panels might be required. Approximately two to three times as many reviewers as are required are nominated initially to allow for expected reductions due to conflict of interest and non-availability. The initial review roster is reviewed by the responsible Office of Developmental Programs staff prior to final approval by the Commissioner, RSA. The primary basis for selection of reviewers is their knowledge of the specific rehabilitation program or program area(s). Competence is judged primarily on the basis of education and experience of potential reviewers, and past performance of repeat reviewers. Special attention is also given to avoiding conflict of interest and to ensuring that the reviewer pool represents a reasonable distribution of such variables as sex, race, and handicapping conditions. More specifically, selection of panelists includes consideration of:

(a) Evidence of Scholarship: (1) Advanced degrees; (2) Publications; (3) Consultancies; (4) Committee services; (5) Professional; (6) Employment expertise.

(b) Past Performance as a Reviewer: (1) Quality of judgements; (2) Thoroughness of documentation; (3) Independence/flexibility; (4) Timeliness; (5) Consistency; (6) Maintenance of confidentiality.

(c) Expertise: (1) Knowledge of Vocational Rehabilitation; (2) Knowledge of the specific program/program area(s) covered by the competitions; (3) Methodology.

(d) Absence of Conflict of Interest: (1) Not directly involved in any application in the same competition; (2) Not from an organization represented in the applications assigned to a specific panel.

(e) Distribution: (1) Balanced representation of sexes; (2) Racial distribution; (3) Inclusion of handicapped persons; (4) At least one non-Federal reviewer; (5) No two reviewers from the same institution; (6) Geographic distribution.

The final selection of reviewers is made at random from the above pool.

The reviewers finally selected for service as panel members are informed of the date and time of the panel meeting and provided with a written contract for their services as panelists. The meeting begins with a detailed orientation to the review process including a review of the program announcement, application instructions, selection criteria, application evaluation forms, and conflict of interest requirements. Written instructions are provided to all reviewers covering the purpose of the review, the conflict of interest statement, a set of directions for the technical review and for the completion of the technical review form, the role of the Project Officer and the role of the Grants Officer. General information about the specific program is presented for the benefit of new reviewers, with emphasis on the fact that applications are to be reviewed solely on the basis of published selection criteria. A primary reviewer is assigned to each application and a chairperson of the group is appointed. He/she is responsible for the management of the meeting.

After completion of the orientation, reviewers are given time to review, evaluate, and score each application within the competition. Following discussion of each individual application and a discussion of reviewer recommendations, the primary reviewer for each application prepares a written summary of the group's recommendation. The Project Officer is responsible for ensuring accurate documentation of meeting proceedings. After the meeting applications are ranked on the basis of the total evaluation score of all panel members. If the number of applications submitted under the program competition requires the use of more than one panel, the individual reviewer scores of all applications from each of the panels are entered into the computer and compared statistically to arrive at standard scores for each application. These standard scores are then used as the basis for establishing the rank order of all applications within the competition.

Following the panel review, the project officer prepares a summary report of panel results including panel recommendations and individual project ratings, a slate in standard score format of all recommended and not recommended applications included in the competition and justification of recommendation for funding of each application selected out of rank order. The panel results and project officer recommendations are reviewed, appoved, disapproved and/or revised by the project officer's supervisor(s). The Associate Commissioner for Developmental Programs reviews the final approved funding package to ensure overall procedural and program consistency of recommendations and forwards them to the RSA Commissioner.

The Commissioner's review includes an analysis and discussion of the overall budget and policy implications of the slate of recommended applications. The Commissioner, as responsible official, conducts a prefunding meeting for the program. The Commissioner, RSA, invites appropriate RSA staff, other Office of Special Education and Rehabilitative Services (OSERS) responsible officials, representatives of the Office of the Assistant Secretary, OSERS, and Assistance Management and Procurement Service (AMPS) representatives to review the transmittal memorandum and review results at a meeting scheduled for that purpose. Based on the transmittal memorandum and the information from the meeting, the Commissioner, RSA, makes final recomendations to AMPS for approval of the funding package and negotiation of the grant budgets. These final recommendations are forwarded to AMPS through the Assistant Secretary, OSERS. The final act in this process is the negotiation of the budget among the project officer, Assistance, Management and Procurement Officer and the grantee.

Question: How many on-site case reviews, and with how many personnel, has RSA conducted in State agencies in each of the last four fiscal years? How many on-site management reviews has it conducted and with how many personnel in each of those years?

Answer: The number of on-site case and management reviews conducted over the past four fiscal years and the number of personnel participating in these reviews has varied from year to year. During the last 3 years RSA resources have been shifted to provide more technical asistance in areas included in the RSA Goals and Objectives. These include increasing the number of competitive placements, improved management of the VR system and efforts to provide services to groups considered underserved.

Question: One of the primary responsibilities of the management services staff in RSA is to determine on a regular basis if all of a State's federal allotment is going to be matched so that it can be used. It appears that some State agencies, such as Puerto Rico, are being permitted to hold federal funds up to the last day of the fiscal year before returning unmatched funds. At the same time, there are many States overmatching their allotments and eagerly awaiting additional funds in order to serve additional clients. What strength has RSA or OSERS developed to prevent recurrence of lapsed funds in Puerto Rico and the Territories? When was this problem last addressed in an on-site monitoring visit to Puerto Rico?

Answer: After being alerted to this situation in FY 1983 and learning that the cause was related to insufficient State matching funds, over estimation of expenditures and in adequate State agencies accounting systems, RSA requested closer monitoring of fiscal and statistical reports; directed technical assistance to State on accounting systems; and required an examination of fiscal matters in on-site visit. RSA Region II (New York) staff made an on-site review in Puerto Rico on March 27-29, 1984 and a follow-up visit on June 25-26, 1984. In both sessions, there were discussions on switching the States' manual accounting system to an automated one.

Question: Between 1981 and 1983 the travel budgets for RSA regional offices were cut by 51%. In FY 1984, it appears that there was another reduction of about 40%. Who sets the allocation for the travel budget for RSA in the Department of Education? How was it determined that RSA would need less than it has actually *obligated* for travel in the past?

Answer: OSERS receives an annual travel budget from the Department. Each OSERS component is then asked to submit a travel plan within a target figure. Final budgets are then negotiated based on travel priorities such as program monitoring and the investigation of fraud, waste and abuse.

Question: RSA regional offices are now required to submit quarterly travel plans and have them approved before they can undertake any on-site visits for monitoring and technical assistance. Is the responsibility for approving or disapproving these plans OSERS' or RSA's? Who in OSERS or RSA routinely looks at travel plans before they are approved? Who has the final approval?

Answer: The primary responsibility for approving or disapproving regional travel plans rests with the RSA Commissioner, with the Deputy Assistant Secretary, OSERS maintaining oversight responsibilities.

Question: A recent survey of 32 state rehabilitation agencies showed that 30 states had requested consultation and/or technical assistance from regional or national RSA offices in the past year. Almost 40 percent stated that the assistance was not received or the assistance was inadequate. The vast majority states that on-site assistance would have been more effective than the assistance they received. Since you note in the testimony provided to the Subcommittee that monitoring is greatly enhanced by technical assistance, what steps will you take to improve the provision of technical assistance from both regional and national offices that is requested by state agencies?

Answer: We are not familiar with the survey you have mentioned. We believe our efforts in the technical assistance area to be substantial. However, we are always ready to make improvements where necessary.

Question: The Rehabilitation Act requires a report to Congress on activities carried out under the Act for each fiscal year. Although the report is due within 120 days of the beginning of each fiscal year, Congress has not yet received the report for fiscal year 1983. Please provide the Subcommittee with an explanation of this situation. When will the fiscal year 1983 report be sent to Congress? When will the fiscal year 1983 report be sent to Congress? Will the report for fiscal year 1984 be provided to Congress prior to January 1, 1985, as is required by the statute?

Answer: Section 13 requires that a full and complete annual report be transmitted to the Congress on the activities carried out under the Act no later than one hundred and twenty days after the close of each fiscal year. The statutory date for the report is therefore January 28 of each calendar year.

The fiscal year 1983 report has been delayed this calendar year because of difficulties in the collection of data and editorial problems.

The Office of Management and Budget is currently reviewing the report. Upon completion of this review the report will be transmitted to Congress.

The fiscal year report is in preparation at this time. The projected transmittal date of this report is January 28, 1985.

Question: Cost-effectiveness data on the federal rehabilitation program has not been provided for the last four years. Although states are individually assessing the cost-effectiveness of their programs, it is critical that the information be available on a national basis. Please provide the Subcommittee with the best available data showing the current cost-effectiveness of the federal program.

Answer: The last issuance of cost-effectiveness estimates prepared by the Rehabilitation Services Administration appeared in July 1982 (copy attached) for the period ending with Fiscal Year 1980. At the time, the State-Federal rehabilitation program was projected to be cost-beneficial. Since the report was released, the Office of Management and Budget asked the Department to study ways to strengthen the methodology employed in deriving cost-effectiveness estimates. In support of this request the Department awarded a contract in September to review underlying assumptions and to determine the best methodology to use in future studies. Regardless of methodology, the basic program data needed to generate estimates for Fiscal Years 1983 and 1984 are not yet available.

QUESTIONS ON SPECIAL EDUCATION

Question: What is the status of the independent contractor's evaluation of the Monitoring System?

Answer: Dr. Mary A. Ellzey, Evaluation Systems Design, Inc., completed an independent review of the monitoring system. A copy of the report is enclosed. Since the initial report, SEP has used the services of the evaluator to assist in the design and development of a more comprehensive and structured monitoring system. A status report of the progress made on completion of products required for the monitoring system as of close of business, November 27, 1984 is also enclosed for your review.

Question: What additions have been made or plan to be made to the monitoring staff in terms of increased legal expertise as well as statistical expertise?

Answer: SEP has included two lawyers and statistical expertise in the development of the monitoring system. We are satisfied that the quality of existing staff is sufficient.

Question: What has been done to improve the timetable of Program Review Letters following monitoring episodes?

Answer: SEP has taken several steps to improve its procedures to ensure the timely delivery of Program Review Letters. First, follow-up for all states monitored over the past three years has been established as a major priority for monitoring staff during the past several months. Twenty-two States have been identified for follow-up, and letters concerning outstanding obligations have been sent. Second, of the States monitored during the past three years, only two States have not received Program Review letters. Both of these letters are in final clearance and will be sent shortly. Third, the new monitoring procedures require the preparation of monitoring reports within sixty days of completion of the monitoring activity.

Question: What is the status of communication between OSERS and OCR to improve the implementation of the MOU? What further action will be taken in this regard?

Answer: A task force has met on several occasions to prepare a decision memorandum for the respective Assistant Secretaries of OSERS and OCR. The task force is comprised of professional staff familiar with the implementation of the current MOU. The task force is offering several broad areas for reconsideration by the Assistant Secretaries in the decision memorandum. Upon receipt of the responses from the respective Assistant Secretaries, work on the implementation and drafting of recommended changes to a MOU will be immediately initiated.

Question: What criteria are used to determine whether a travel request is accepted? What priority is given to travel for purposes of monitoring as approved to travel to participate in professional conferences in both the Office of Special Education Programs as well as OSERS from office?

Answer: In the Office of Special Education Programs travel requests to implement the schedule for monitoring P.L. 94-142 is given first priority over requests for travel for monitoring discretionary grants and requests for speaking engagements and professional conferences.

UNITED STATES DEPARTMENT OF EDUCATION
THE SECRETARY

MAR 18 1985

The Honorable Pat Williams
Chairman, Subcommittee on Select
  Education
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I have received your letter of February 26 requesting the Department's views on the impact of the Supreme Court's decision in Smith v. Robinson on our monitoring and enforcement activities affecting handicapped children.

We do not believe at this time that the Smith decision compels a change in the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973 or in the Office for Civil Rights' monitoring and enforcement duties. The Department will continue its vigorous efforts to ensure that Federal funds are not used to support discrimination against handicapped children.

I appreciate your efforts to solicit the Department's views in developing legislation on this important matter.

Sincerely,

William J. Bennett